

**Jennifer Wood**  
**Mayor**

**Chuck McGuire**  
**Mayor Pro Tem**

**J. Carlos Gomez**  
**Council Member**

**Bill Smith**  
**Council Member**

**Rick Warren**  
**Council Member**



## **AGENDA**

### **CITY OF CALIFORNIA CITY SPECIAL JOINT MEETING OF THE SUCCESSOR AGENCY FOR THE CALIFORNIA CITY REDEVELOPMENT AGENCY AND THE CITY COUNCIL**

**Tuesday November 22, 2016**

**Closed Session 5:30 p.m.  
Special Joint Meeting 6:00 p.m.**

**Council Chambers  
21000 Hacienda Blvd.  
California City, Ca 93505**

If you need special assistance to participate in this meeting, please contact the City Clerk's office at (760) 373-7140. Notification of 72 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting. (28 CFR 35.102-35.104 American Disabilities Act Title II)

**NOTE:** Any writings or documents provided to a majority of the City Council regarding any item on this agenda is available for public inspection in the City Clerk's office at City Hall located at 21000 Hacienda Blvd, California City, Ca during normal business hours, except such documents that relate to closed session items or which are otherwise exempt from disclosure under applicable laws. These writings are also available for review in the public access binder in the Council Chambers at the time of the meeting.

**LATE COMMUNICATIONS:** Following the posting of the agenda any emails, writings or documents that the public would like to submit to the council must be received by the City Clerk no later than 3pm the Monday prior to the meeting. Past that deadline citizens may bring these items directly to the meeting. Please bring 10 copies for distribution to council, staff and the public.

Agenda  
November 22, 2016

***\*\*At this time, please take a moment to turn off your cell phones\*\****

5:30 P.M.  
CLOSED SESSION

**CALL TO ORDER**

**ROLL CALL**

Councilmembers Gomez, Smith, Warren, Mayor Pro Tem McGuire, Mayor Wood

**ADOPT AGENDA**

**PUBLIC COMMENTS**

Members of the public are welcome to address the City Council only on those items on the Closed Session agenda. Each member of the public will be given three minutes to speak.

**CLOSED SESSION / CITY COUNCIL**

**CS 1.** Pursuant to Cal. Gov't Code §54956.9(d)4: Potential Litigation (2) Cases

**REPORT OUT OF CLOSED SESSION**

SPECIAL JOINT MEETING  
6:00 p.m.

**ROLL CALL**

Councilmembers Gomez, Smith, Warren, Mayor Pro Tem McGuire, Mayor Wood

**PLEDGE OF ALLEGIANCE / INVOCATION**

**CITY CLERK REPORTS / LATE COMMUNICATIONS**

**PRESENTATIONS**

City Treasurer Keith Middleton – October Report

**STAFF ANNOUNCEMENTS / REPORTS**

Police Lt. Huizar – Department Update  
Fire Chief Armstrong – Department Update  
Public Works Director Platt – Department Update  
Finance Director O'Laughlin – Department Update  
Park Supervisor Daverin – Department Update  
City Manager Weil – City Updates  
AB 1234 – Council Updates

**CIVIC / COMMUNITY / ORGANIZATIONS ANNOUNCEMENTS**

**PUBLIC BUSINESS FROM THE FLOOR** This portion of the meeting is reserved for persons desiring to address the City Council on any matter not on this agenda, and over which the City Council has jurisdiction. Please state your name for the record and limit your comments to three minutes.

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**CONSENT CALENDAR / CITY COUNCIL**

**CC 1. CITY CHECK REGISTERS** dated through 11/17/16

**CONTINUED BUSINESS / CITY COUNCIL**

**CB 1. Scout Island: Waiver of Fees for Local Boys and Girl Scout Troop – Public Works**  
Director Platt

Recommendation

Council discuss and wave the facility fee for local troops 413 and 7572, no to exceed (5) years

**NEW BUSINESS / SUCCESSOR AGENCY**

**NB 1. Sale of Industrial Property – Executive Director Weil**

Recommendation

Directors discuss and approve the Purchase and Sell Agreement as presented, authorize the Executive Director to sign all contractual documents and to open escrow with First American Title.

**NEW BUSINESS / CITY COUNCIL**

**NB 1. Finance Department: Payment to Cal OES for closeout of FEMA Disaster DR-1952**  
– Finance Director O’Laughlin

Recommendation

Council discuss and approve payment of this invoice to Cal OES

**NB 2. Proposed Increase in Elected Officials Stipends – Finance Director O’Laughlin**

Recommendation

Council discuss and direct staff as desired

**NB 3. Municipal Code Maintenance: Title 7 – Public Works Director Platt**

Recommendation

Council discuss and give first reading, by title only, of “**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CALIFORNIA CITY AMENDING THE CALIFORNIA CITY MUNICIPAL CODE AS IT RELATES TO THE FREQUENCY OF BILLING FOR WATER AND SEWER SERVICES AND COSTS ASSOCIATED WITH SERVICE CONNECTIONS**”

**NB 4. Police Department: Purchase of Fingerprint Readers in order to operate Mobile Data Computers (MDC’S) – Police Lt. Huizar**

Recommendation

Council discuss, approve funding for the purchase of the finger printers in order to operate the MDC’S and be in compliance with the Department of Justice

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**NB 5. Public Works Department: City Engineer Contract – Public Works Director Platt**

Recommendation

Council discuss, exercise the remaining 18 months on Helt Engineering's current contract through March 31, 2018, and release a RFQ for city engineering services six months before the contract end date

**COUNCIL AGENDA**

This portion of the meeting is reserved for council members to present information, announcements, and items that have come to their attention. The Brown Act precludes Council, staff or public discussion. Short staff responses are appropriate. The Council will take no formal action. A Council member may request the City Clerk to calendar an item for consideration at a future meeting, or refer an item to staff.

**Councilmember Gomez  
Councilmember Smith  
Councilmember Warren  
Mayor Pro Tem McGuire  
Mayor Wood**

**ADJOURNMENT**

**AFFIDAVIT OF POSTING:** This agenda was posted on all official City bulletin boards, the City's website and agenda packets were completely accessible to the public at City Hall at least 72 hours prior to the Council Meeting.

*Denise Hilliker, City Clerk*



California City, California 93505  
TREASURER'S MONTHLY REPORT OF INVESTMENT  
October 2016

The general investment portfolio consists of funds for operations, capital improvement projects (CPI), water rate stabilization, administration replacements and reserves.

General Investment Accounts	Balance on 9/30/2016	Net Transactions	Balance on 10/31/2016	Percent of Total
Local Agency Investment Fund (122)	\$ 2,269,234	\$ (494,844)	\$ 1,774,390	27.59%
Kern County Investment Fund (20202)	\$ 4,032,092	\$ 9,443	\$ 4,041,535	62.84%
<b>Sub-Total Investment Accounts</b>	<b>\$ 6,301,326</b>	<b>\$ (485,402)</b>	<b>\$ 5,815,925</b>	
General Operating Accounts	9/30/2016	Net Transactions	10/31/2016	
Bank of the Sierra -- General Checking	\$ 1,053,690	\$ (438,957)	\$ 614,733	9.56%
Petty Cash - City Hall	\$ 500	\$ -	\$ 500	0.01%
Petty Cash - City Manager	\$ 200	\$ -	\$ 200	0.00%
Petty Cash - Fire	\$ 250	\$ -	\$ 250	0.00%
Petty Cash - Police	\$ 250	\$ -	\$ 250	0.00%
Petty Cash - Parks & Recreation	\$ 100	\$ -	\$ 100	0.00%
<b>Sub-Total Operating Accounts</b>	<b>\$ 1,054,990</b>	<b>\$ (438,957)</b>	<b>\$ 616,033</b>	
<b>Total City Operating Funds</b>	<b>\$ 7,356,316</b>	<b>\$ (924,359)</b>	<b>\$ 6,431,957</b>	<b>100.00%</b>

Restricted Successor Agency Accounts				
Checking Account	9/30/2016	Net Transactions	10/31/2016	
Successor Agency -- Bank of the Sierra, Checking	\$ 173,384	\$ (22,109)	\$ 151,275	100.00%
<b>Total Successor Agency Funds</b>	<b>\$ 173,384</b>	<b>\$ (22,109)</b>	<b>\$ 151,275</b>	<b>100.00%</b>

Restricted SDI Agency Accounts				
Checking Account	9/30/2016	Net Transactions	10/31/2016	
(SDI) -- Bank of the Sierra, Checking	\$ 30,422	\$ -	\$ 30,422	0.04%
<b>Sub-Total SDI Checking Account</b>	<b>\$ 30,422</b>	<b>\$ -</b>	<b>\$ 30,422</b>	
Investment Account (Updated Monthly)	9/30/2016	Net Transactions	10/31/2016	
(SDI) US Bank Investments	\$ 85,745,875	\$ (310,767)	\$ 85,435,108	99.03%
(SDI) Certificate of Deposit with Mission Bank	\$ 800,602	\$ 6,243	\$ 806,845	0.94%
<b>Sub-Total SDI Investment Accounts</b>	<b>\$ 86,546,477</b>	<b>\$ (304,524)</b>	<b>\$ 86,241,953</b>	
<b>Total SDI Agency Funds</b>	<b>\$ 86,576,900</b>	<b>\$ (304,524)</b>	<b>\$ 86,272,376</b>	<b>100.00%</b>

#### INVESTMENT POLICY

The Treasurer shall invest the City's monies as permitted in the City's approved investment policy. The Treasurer shall consider current and projected cash needs in making such investments.

\* Contact City Treasurer for US Bank investment breakdown.

Keith L Middleton, Treasurer

*Presentation*

California City, California 93505  
TREASURER'S MONTHLY REPORT OF INVESTMENT  
October 2016

US Bank		
Market Value Summary - CUSTODIAN ACCOUNT	9/30/2016	10/31/2016
Beginning Market Value	84,700,592	84,883,784
Ending Market Value	84,883,784	84,573,018
Investment Results	183,193	(310,767)
Market Value Summary - REDEVELOPEMENT AGENCY PROJ AREA TAX	9/30/2016	10/31/2016
Beginning Market Value	-	7
Ending Market Value	7	7
Investment Results	7	-
Market Value Summary - SUCCESSOR AGENCY Proj Area TAX INTEREST	9/30/2016	10/31/2016
Beginning Market Value	187,981	1
Ending Market Value	1	1
Investment Results	(187,981)	-
Market Value Summary - SUCCESSOR AGENCY Proj Area TAX PRINCIPAL	9/30/2016	10/31/2016
Beginning Market Value	180,000	0
Ending Market Value	0	0
Investment Results	(180,000)	-
Market Value Summary - SUCCESSOR AGENCY Proj Area TAX RESERVE	9/30/2016	10/31/2016
Beginning Market Value	862,082	862,082
Ending Market Value	862,082	862,082
Investment Results	-	-
<b>Grand Total</b>	<b>85,745,875</b>	<b>85,435,108</b>

## Report Criteria:

Report type: Invoice detail

Bank Bank Number = 2

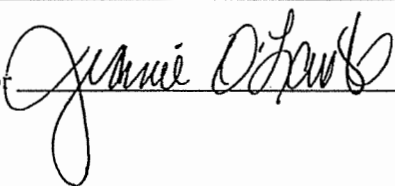
GL Period	Check Issue Date	Check Number	Payee	Invoice Number	Invoice GL Account	Invoice Amount	Check Amount
1340							
11/16	11/08/2016	1340	US Bank	4442829	72-7211-630	6,782.38	6,782.38
Total 1340:							6,782.38
Grand Totals:							6,782.38

## Summary by General Ledger Account Number

GL Account	Debit	Credit	Proof
72-02005	.00	6,782.38-	6,782.38-
72-7211-630	6,782.38	.00	6,782.38
Grand Totals:	6,782.38	6,782.38-	.00

I HEREBY CERTIFY AS TO THE ACCURACY OF THE DEMANDS AND AVAILABILITY OF FUNDS:

Dated: 11-8-16

Finance Director 

## Report Criteria:

Report type: Invoice detail

Bank Bank Number = 1

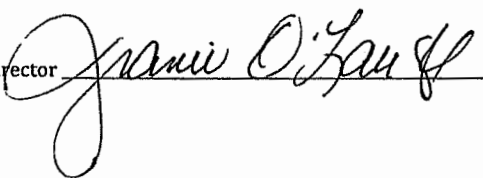
Check Voided = no

GL Period	Check Issue Date	Check Number	Payee	Description	Invoice Number	Invoice Amount	Check Amount
11/16	11/04/2016	98729	Middleton, Keith	Travel Reimbursement to S	110116-1	160.00	160.00
Total 98729:							160.00
Grand Totals:							160.00

I HEREBY CERTIFY AS TO THE ACCURACY OF THE DEMANDS AND AVAILABILITY OF FUNDS:

Dated: 11-4-16

Finance Director





## Report Criteria:

Report type: Invoice detail  
Check.Check Number = 98730  
Bank.Bank Number = 1  
Check.Voided = no

GL Period	Check Issue Date	Check Number	Payee	Description	Invoice Number	Invoice Amount	Check Amount
11/16	11/04/2016	98730	Factormart, Inc	ID Card Grant Reimbursabl	7469	3,080.00	3,080.00
Total 98730:							3,080.00
Grand Totals:							3,080.00

I HEREBY CERTIFY AS TO THE ACCURACY OF THE DEMANDS AND AVAILABILITY OF FUNDS:

Dated: 11-4-16Finance Director Jeanie O'Hall

## Report Criteria:

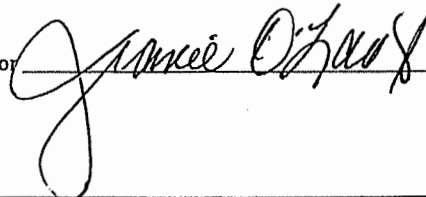
Report type: Invoice detail  
Bank Bank Number = 1  
Check Voided = no

GL Period	Check Issue Date	Check Number	Payee	Description	Invoice Number	Invoice Amount	Check Amount
11/16	11/08/2016	98731	Frontier	Telephone Service from Ve	062303-5 102816	239.17	239.17
Total 98731:							239.17
11/16	11/08/2016	98732	Paragon Investigative Services	IA Investigations	11032016	5,133.60	5,133.60
Total 98732:							5,133.60
11/16	11/08/2016	98733	So California Edison Co	City Electricity	2-01-388-5074	43,449.08	43,449.08
Total 98733:							43,449.08
Grand Totals:							48,821.85

## Summary by General Ledger Account Number

GL Account	Debit	Credit	Proof
10-02005	.00	3,411.51-	3,411.51-
10-4153-281	3,172.34	.00	3,172.34
10-4153-284	239.17	.00	239.17
16-02005	.00	103.13-	103.13-
16-4226-281	103.13	.00	103.13
18-02005	.00	5,988.85-	5,988.85-
18-4212-281	664.81	.00	664.81
18-4212-630	5,133.60	.00	5,133.60
18-4217-281	190.44	.00	190.44
19-02005	.00	149.82-	149.82-
19-4222-281	149.82	.00	149.82
27-02005	.00	6,612.67-	6,612.67-
27-4411-281	6,612.67	.00	6,612.67
51-02005	.00	24,617.98-	24,617.98-
51-5115-281	24,617.98	.00	24,617.98
52-02005	.00	7,616.84-	7,616.84-
52-5213-281	7,616.84	.00	7,616.84
53-02005	.00	321.05-	321.05-
53-5310-281	321.05	.00	321.05
Grand Totals:	48,821.85	48,821.85-	.00

I HEREBY CERTIFY AS TO THE ACCURACY OF THE DEMANDS AND AVAILABILITY OF FUNDS:

Dated: 11-8-16Finance Director 

## Report Criteria:

Report type: Invoice detail  
Bank.Bank Number = 1  
Check.Voided = no

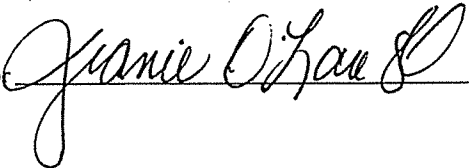
GL Period	Check Issue Date	Check Number	Payee	Description	Invoice Number	Invoice Amount	Check Amount
11/16	11/09/2016	98734	Hulse, Ryan	Per Diem Marijuana Mgmt	110916	241.50	241.50
Total 98734:							241.50
11/16	11/09/2016	98735	M & M Sports	Response Team Uniforms S	37649	210.70	210.70
Total 98735:							210.70
11/16	11/09/2016	98736	Premier Digital Printing	20,000 Recreation Maps	17195	9,969.75	9,969.75
Total 98736:							9,969.75
11/16	11/09/2016	98737	Riverside County Sheriff's	Advanced Officer Perishabl	18-4212 PST	320.00	320.00
Total 98737:							320.00
11/16	11/09/2016	98738	Schultheiss, Ryun	Per Diem Marijuana Mgmt	110916	241.50	241.50
Total 98738:							241.50
Grand Totals:							10,983.45

## Summary by General Ledger Account Number

GL Account	Debit	Credit	Proof
16-02005	.00	9,969.75-	9,969.75-
16-4228-630	9,969.75	.00	9,969.75
18-02005	.00	803.00-	803.00-
18-4212-330	803.00	.00	803.00
29-02005	.00	210.70-	210.70-
29-4219-450	210.70	.00	210.70
Grand Totals:	10,983.45	10,983.45-	.00

I HEREBY CERTIFY AS TO THE ACCURACY OF THE DEMANDS AND AVAILABILITY OF FUNDS:

Dated: 11-9-16

Finance Director 

## Report Criteria:


Report type: Invoice detail  
Bank Bank Number = 1  
Check Voided = no

GL Period	Check Issue Date	Check Number	Payee	Description	Invoice Number	Invoice Amount	Check Amount
11/16	11/14/2016	98739	Kelakios, Michael	Per Diem Advance Officer P	110916	150.00	150.00
Total 98739:							150.00
Grand Totals:							150.00

## Summary by General Ledger Account Number

GL Account	Debit	Credit	Proof
18-02005	.00	150.00-	150.00-
18-4212-230	150.00	.00	150.00
Grand Totals:	150.00	150.00-	.00

I HEREBY CERTIFY AS TO THE ACCURACY OF THE DEMANDS AND AVAILABILITY OF FUNDS:

Dated: 11-14-16Finance Director 



## Report Criteria:

Report type: Invoice detail

Bank Number = 1

Check Voided = no

GL Period	Check Issue Date	Check Number	Payee	Description	Invoice Number	Invoice Amount	Check Amount
11/16	11/17/2016	98740	A V E K	M & I Water Charges	23330	6,765.75	6,765.75
Total 98740:							6,765.75
11/16	11/17/2016	98741	Aguilera, Marin & Ester	Refund 20284 94th	105636.08	1,111.04	1,111.04
Total 98741:							1,111.04
11/16	11/17/2016	98742	Alexander's Contract Services	Meter Readers	201611010081	5,501.51	5,501.51
Total 98742:							5,501.51
11/16	11/17/2016	98743	Alexander's Enterprises, Inc	Water Billing Process	2257	3,715.76	3,715.76
Total 98743:							3,715.76
11/16	11/17/2016	98744	Allstar Fire Equip, Inc	Fire Foam	193852	4,811.70	4,811.70
Total 98744:							4,811.70
11/16	11/17/2016	98745	Amber Chemical, Inc.	Hypochlorite Solution	0339084	219.30	219.30
11/16	11/17/2016	98745	Amber Chemical, Inc.	Hypochlorite Solution	0339190	429.46	429.46
11/16	11/17/2016	98745	Amber Chemical, Inc.	Hypochlorite Solution	0339329	146.20	146.20
Total 98745:							794.96
11/16	11/17/2016	98746	AmeriPride	Uniform Maintenance	2100560210	132.55	132.55
11/16	11/17/2016	98746	AmeriPride	Uniform Maintenance	2100561707	246.13	246.13
Total 98746:							378.68
11/16	11/17/2016	98747	Andrew Parker	Fire Rescue Door Seals	201655	800.00	800.00
11/16	11/17/2016	98747	Andrew Parker	Transport Construction Tra	201659	500.00	500.00
Total 98747:							1,300.00
11/16	11/17/2016	98748	Anguiano, Diego & Angie	Refund 9149 Jacaranda Ave	106291.02	27.89	27.89
Total 98748:							27.89
11/16	11/17/2016	98749	Applied Concepts, Inc	Radar Gun	297391	1,519.63	1,519.63
Total 98749:							1,519.63
11/16	11/17/2016	98750	Arrow International	Medical Supplies	94311532	602.01	602.01
Total 98750:							602.01
11/16	11/17/2016	98751	AT&T Mobility	IPad & Iphone Phone Bill	X10182016	1,898.69	1,898.69
Total 98751:							1,898.69
11/16	11/17/2016	98752	Bakersfield Well & Pump Inc	Purging & Sampling of Mon	16796	3,000.00	3,000.00

GL Period	Check Issue Date	Check Number	Payee	Description	Invoice Number	Invoice Amount	Check Amount
Total 98752:							3,000.00
11/16	11/17/2016	98753	Benz Propane Co, Inc	Propane	238404299	610.06	610.06
Total 98753:							610.06
11/16	11/17/2016	98754	Bound Tree Medical	Medical Supplies	82317950	109.66	109.66
Total 98754:							109.66
11/16	11/17/2016	98755	Burkhart, Michael	Tiny Tots Class	110916	178.50	178.50
Total 98755:							178.50
11/16	11/17/2016	98756	Butler Woodcrafters	5 Captain's Bed	049477	5,528.75	5,528.75
Total 98756:							5,528.75
11/16	11/17/2016	98757	Callahan, Ryan Michael	Mobile Car Wash	78	195.00	195.00
Total 98757:							195.00
11/16	11/17/2016	98758	Carver, Frank	Refund 21400 Reed	105631.07	9.55	9.55
Total 98758:							9.55
11/16	11/17/2016	98759	Chief	Binoculars Grant Reimburs	299929	102.99	102.99
Total 98759:							102.99
11/16	11/17/2016	98760	City Hardware	Public Works	103116	4,382.37	4,382.37
11/16	11/17/2016	98760	City Hardware	Fire Hardware Supplies	103116 - FIRE	624.39	624.39
11/16	11/17/2016	98760	City Hardware	Parks & Rec	103116 PARKS	272.95	272.95
11/16	11/17/2016	98760	City Hardware	OHV, ACO, Ground Ops, PD	PD, OHV, 103116	6,555.35	6,555.35
Total 98760:							11,835.06
11/16	11/17/2016	98761	Clearview Realty //Josh Meiste	Refund 19924 Taylor	103923.09	60.65	60.65
11/16	11/17/2016	98761	Clearview Realty //Josh Meiste	Refund 8248 Viburnum	105239.06	33.06	33.06
Total 98761:							93.71
11/16	11/17/2016	98762	Creative Bus Sales, Inc	Exit Decals DAR	5099738	60.06	60.06
Total 98762:							60.06
11/16	11/17/2016	98763	CSMFO	Annual Membership	17998 ORDER #	220.00	220.00
Total 98763:							220.00
11/16	11/17/2016	98764	Daily Independent	Ren Fair Advertising	101316 DISPLAY	216.00	216.00
Total 98764:							216.00
11/16	11/17/2016	98765	Daverin, Brenda	Halloween, Night Out Suppl	110316	274.03	274.03
Total 98765:							274.03

GL Period	Check Issue Date	Check Number	Payee	Description	Invoice Number	Invoice Amount	Check Amount
11/16	11/17/2016	98766	Deere Credit	Heavy Equipment Purchase	1760242	1,162.04	1,162.04
11/16	11/17/2016	98766	Deere Credit	Heavy Equipment Purchase	1762620	2,596.24	2,596.24
Total 98766:							3,758.28
11/16	11/17/2016	98767	Dennis Automotive	Auto Service	17814	184.00	184.00
11/16	11/17/2016	98767	Dennis Automotive	Auto Service	17816	72.00	72.00
11/16	11/17/2016	98767	Dennis Automotive	Auto Service	17820	272.00	272.00
11/16	11/17/2016	98767	Dennis Automotive	Auto Service	17821	40.00	40.00
11/16	11/17/2016	98767	Dennis Automotive	Auto Service	17823	272.00	272.00
11/16	11/17/2016	98767	Dennis Automotive	Auto Service	17824	200.00	200.00
11/16	11/17/2016	98767	Dennis Automotive	Auto Service	22182	51.75	51.75
11/16	11/17/2016	98767	Dennis Automotive	Auto Service	22183	51.75	51.75
11/16	11/17/2016	98767	Dennis Automotive	Auto Service	22184	51.75	51.75
11/16	11/17/2016	98767	Dennis Automotive	Auto Service	22190	51.75	51.75
Total 98767:							1,247.00
11/16	11/17/2016	98768	Department of Justice	Fingerprinting	198233	258.00	258.00
Total 98768:							258.00
11/16	11/17/2016	98769	DigiTech Inc.	Security Service	6464	45.99	45.99
Total 98769:							45.99
11/16	11/17/2016	98770	Dr Kim M Brandau, Inc	Medical Services Director	2016-11-01	500.00	500.00
Total 98770:							500.00
11/16	11/17/2016	98771	Fed Ex	Priority Mailings	5-593-90329	86.01	86.01
11/16	11/17/2016	98771	Fed Ex	Priority Mailings	5-599-95036	86.01	86.01
11/16	11/17/2016	98771	Fed Ex	Priority Mailings	5-607-37986	96.65	96.65
Total 98771:							268.67
11/16	11/17/2016	98772	Ferguson Waterworks	Transmission Line Supplies	0570873	1,438.97	1,438.97
11/16	11/17/2016	98772	Ferguson Waterworks	Transmission Line Supplies	WD002113-1	3,192.75	3,192.75
11/16	11/17/2016	98772	Ferguson Waterworks	Transmission Line Supplies	WD002114	882.59	882.59
11/16	11/17/2016	98772	Ferguson Waterworks	Transmission Line Supplies	WD002116	880.16	880.16
11/16	11/17/2016	98772	Ferguson Waterworks	Transmission Line Supplies	WD002139	109.87	109.87
11/16	11/17/2016	98772	Ferguson Waterworks	Transmission Line Supplies	WD002139-1	67.10	67.10
11/16	11/17/2016	98772	Ferguson Waterworks	Transmission Line Supplies	WD002140	864.70	864.70
11/16	11/17/2016	98772	Ferguson Waterworks	Scout Island, Hyundai, Inve	WD002141	2,687.50	2,687.50
11/16	11/17/2016	98772	Ferguson Waterworks	Scout Island, Hyundai, Inve	WD002144	1,212.59	1,212.59
11/16	11/17/2016	98772	Ferguson Waterworks	Transmission Line Supplies	WD002145	343.19	343.19
11/16	11/17/2016	98772	Ferguson Waterworks	Scout Island, Hyundai, Inve	WD002175	3,600.26	3,600.26
11/16	11/17/2016	98772	Ferguson Waterworks	Scout Island, Hyundai, Inve	WD002178	1,887.49	1,887.49
11/16	11/17/2016	98772	Ferguson Waterworks	Scout Island, Hyundai, Inve	WD002178-1	37.30	37.30
11/16	11/17/2016	98772	Ferguson Waterworks	Scout Island, Hyundai, Inve	WD002179	209.63	209.63
11/16	11/17/2016	98772	Ferguson Waterworks	Transmission Line Supplies	WV001977	1,395.37	1,395.37
11/16	11/17/2016	98772	Ferguson Waterworks	Transmission Line Supplies	WV002130	805.69	805.69
Total 98772:							19,615.16
11/16	11/17/2016	98773	Frontier	Internet Charges	022502-5 110116	169.99	169.99
Total 98773:							169.99

GL Period	Check Issue Date	Check Number	Payee	Description	Invoice Number	Invoice Amount	Check Amount
11/16	11/17/2016	98774	General Office Prod Ctr	Meter Billing Copier	10950	276.76	276.76
Total 98774:							276.76
11/16	11/17/2016	98775	Gibbs, Carolyn Joyce	Refund 20412 Airway	106386.03	17.71	17.71
Total 98775:							17.71
11/16	11/17/2016	98776	Grainger, Inc	LED Clocks	9275118504	45.24	45.24
Total 98776:							45.24
11/16	11/17/2016	98777	Granite Construction Compan	Cold Mix	106384	4,876.00	4,876.00
Total 98777:							4,876.00
11/16	11/17/2016	98778	Greenfields Group LLC,	Refund 9224 Jacaranda	105319.06	77.90	77.90
Total 98778:							77.90
11/16	11/17/2016	98779	HD Supply Waterworks, LTD	Replenish Inventory	G379978	67.19	67.19
Total 98779:							67.19
11/16	11/17/2016	98780	HDWBC - High Desert Wireles	Toughbooks & Installations	10-24-16	6,875.03	6,875.03
Total 98780:							6,875.03
11/16	11/17/2016	98781	Helt Engineering, Inc	13405 Baron to Wonder	16-430	1,095.00	1,095.00
11/16	11/17/2016	98781	Helt Engineering, Inc	13408 Hacienda Blvd-Red	16-431	691.79	691.79
11/16	11/17/2016	98781	Helt Engineering, Inc	16400 Lot Line Transfer Tr	16-433	1,390.00	1,390.00
11/16	11/17/2016	98781	Helt Engineering, Inc	16405 Mendiburu Road Re	16-434	14,422.50	14,422.50
11/16	11/17/2016	98781	Helt Engineering, Inc	16410 Water Availability St	16-435	10,100.00	10,100.00
11/16	11/17/2016	98781	Helt Engineering, Inc	16412 Lot Subdiv. Propose	16-436	8,082.50	8,082.50
11/16	11/17/2016	98781	Helt Engineering, Inc	13408 Hacienda Blvd-Red	16-445	470.00	470.00
11/16	11/17/2016	98781	Helt Engineering, Inc	14406 Wtr Line Replaceme	16-446	4,812.50	4,812.50
11/16	11/17/2016	98781	Helt Engineering, Inc	15406 RSTP Call for Project	16-447	815.00	815.00
11/16	11/17/2016	98781	Helt Engineering, Inc	15409 City Standards	16-448	1,440.00	1,440.00
11/16	11/17/2016	98781	Helt Engineering, Inc	15411 Impact Fee	16-449	575.00	575.00
11/16	11/17/2016	98781	Helt Engineering, Inc	16400 Lot Line Transfer Tr	16-451	1,870.00	1,870.00
11/16	11/17/2016	98781	Helt Engineering, Inc	16405 Mendiburu Road Re	16-452	6,427.50	6,427.50
11/16	11/17/2016	98781	Helt Engineering, Inc	16410 Water Availability St	16-453	10,232.50	10,232.50
11/16	11/17/2016	98781	Helt Engineering, Inc	16412 Lot Subdiv. Propose	16-454	2,692.50	2,692.50
Total 98781:							65,116.79
11/16	11/17/2016	98782	Highway Glass Co	Passenger Door Glass	109096	444.00	444.00
11/16	11/17/2016	98782	Highway Glass Co	Replace Windows HR Office	109097	2,300.00	2,300.00
Total 98782:							2,744.00
11/16	11/17/2016	98783	Information Technology Servi	Access & Maint. Chrgs CLET	5574	1,575.00	1,575.00
Total 98783:							1,575.00
11/16	11/17/2016	98784	Inglis Imports, Inc.	K9 Supplies	6874	256.12	256.12
Total 98784:							256.12



GL Period	Check Issue Date	Check Number	Payee	Description	Invoice Number	Invoice Amount	Check Amount
11/16	11/17/2016	98785	Interon LLC	Chief's Comuter Recovery	2695	473.05	473.05
Total 98785:							473.05
11/16	11/17/2016	98786	JBL & Associates/Fred Whitne	Refund 7318 CCB	100966.06	45.13	45.13
Total 98786:							45.13
11/16	11/17/2016	98787	Karl's Hardware	Chain Saw, Oil, Plugs	F3039, G3889,F293	593.75	593.75
Total 98787:							593.75
11/16	11/17/2016	98788	Kern County Fire Dept	Emergency Comm	17-000133	20,766.99	20,766.99
Total 98788:							20,766.99
11/16	11/17/2016	98789	Kern Valley Sun	Advertising Ren Fair	14842, 14841	98.00	98.00
Total 98789:							98.00
11/16	11/17/2016	98790	Kieffe & Sons Ford	Unit 310 Parts	23452	84.25	84.25
11/16	11/17/2016	98790	Kieffe & Sons Ford	Unit 310 Parts	23476	86.22	86.22
Total 98790:							170.47
11/16	11/17/2016	98791	L N Curtis & Sons	Pants: Rich, Weaver Mielk	60709	1,050.73	1,050.73
Total 98791:							1,050.73
11/16	11/17/2016	98792	LED Global Supply	Lighting in Aspen Mall	13266	1,888.56	1,888.56
Total 98792:							1,888.56
11/16	11/17/2016	98793	Legend Pump & Well Serv	Well Work Well # 3 Improv	53172	67,430.40	67,430.40
Total 98793:							67,430.40
11/16	11/17/2016	98794	Lyon, Michelle E.	500 Cupcakes Night Out	604601	400.00	400.00
Total 98794:							400.00
11/16	11/17/2016	98795	Manning & Kass, Ellrod,	Attorney Services Rendere	FILE # GHC0007728	11,520.93	11,520.93
Total 98795:							11,520.93
11/16	11/17/2016	98796	Martha's Cleaning Service	Janitorial	1406	320.00	320.00
Total 98796:							320.00
11/16	11/17/2016	98797	McMaster Carr	Casters, Acrylic Sheet	86029481	491.19	491.19
11/16	11/17/2016	98797	McMaster Carr	Piano Hinge's	86162973	70.00	70.00
Total 98797:							561.19
11/16	11/17/2016	98798	Merchant's Printing & Envelo	Emergency Medical Report	680819	333.11	333.11
Total 98798:							333.11
11/16	11/17/2016	98799	Mission Uniform Service	Laundry Service	141173 103116	271.52	271.52

GL Period	Check Issue Date	Check Number	Payee	Description	Invoice Number	Invoice Amount	Check Amount
11/16	11/17/2016	98799	Mission Uniform Service	Laundry Service	141173 111416	107.75	107.75
Total 98799:							379.27
11/16	11/17/2016	98800	Mojave Public Utility Dis	Wonder Acres	06-0780-1 103116	2,330.36	2,330.36
Total 98800:							2,330.36
11/16	11/17/2016	98801	Nagy, Douglas	Refund Cit # 52928	CIT # 52928	750.00	750.00
Total 98801:							750.00
11/16	11/17/2016	98802	National Alliance for	10 Renewing Members	27113	195.00	195.00
Total 98802:							195.00
11/16	11/17/2016	98803	Norm Hill Aviation	Airport Internet	252	50.00	50.00
Total 98803:							50.00
11/16	11/17/2016	98804	Office Depot	Office Supplies	877186271001	32.24	32.24
11/16	11/17/2016	98804	Office Depot	Office Supplies	877186328001	347.92	347.92
11/16	11/17/2016	98804	Office Depot	Office Supplies	877186330001	35.96	35.96
11/16	11/17/2016	98804	Office Depot	Office Supplies	877186332001	16.61	16.61
11/16	11/17/2016	98804	Office Depot	Office Supplies	877299786001	201.07	201.07
11/16	11/17/2016	98804	Office Depot	Office Supplies	877310482001	154.64	154.64
11/16	11/17/2016	98804	Office Depot	Office Supplies	877314817001	175.63	175.63
Total 98804:							964.07
11/16	11/17/2016	98805	Orr, David	Instructor Class 1A Reimbu	110716	225.00	225.00
Total 98805:							225.00
11/16	11/17/2016	98806	Patillo, Robert	Facilities Use Deposit Refu	55885	200.00	200.00
Total 98806:							200.00
11/16	11/17/2016	98807	Peterson, Ron	Citation Appeal Reimburse	CIT # 50692	200.00	200.00
Total 98807:							200.00
11/16	11/17/2016	98808	Praxair Distribution Inc	Oxygen	74767120	117.45	117.45
Total 98808:							117.45
11/16	11/17/2016	98809	R S I Petroleum Prod	Fuel	1067545	1,448.48	1,448.48
11/16	11/17/2016	98809	R S I Petroleum Prod	Fuel	1067560	1,857.31	1,857.31
11/16	11/17/2016	98809	R S I Petroleum Prod	Fuel	1067582	260.97	260.97
11/16	11/17/2016	98809	R S I Petroleum Prod	Fuel	1067583	852.61	852.61
11/16	11/17/2016	98809	R S I Petroleum Prod	Fuel	1067584	111.06	111.06
11/16	11/17/2016	98809	R S I Petroleum Prod	Fuel	1067585	706.36	706.36
11/16	11/17/2016	98809	R S I Petroleum Prod	Fuel	1067602	27.91	27.91
11/16	11/17/2016	98809	R S I Petroleum Prod	Fuel	1067621	67.70	67.70
11/16	11/17/2016	98809	R S I Petroleum Prod	Fuel	1067625	68.37	68.37
11/16	11/17/2016	98809	R S I Petroleum Prod	Fuel	1067690	46.86	46.86
Total 98809:							5,447.63

GL Period	Check Issue Date	Check Number	Payee	Description	Invoice Number	Invoice Amount	Check Amount
11/16	11/17/2016	98810	Reliable Air Condit. & Heating	Air Conditioning Work IT R	17178	10,992.00	10,992.00
Total 98810:							10,992.00
11/16	11/17/2016	98811	RMC Water & Environment	California City Fremont Vall	22817	13,534.00	13,534.00
Total 98811:							13,534.00
11/16	11/17/2016	98812	Robertson's	FOB PLT46 California City	874839	22.58	22.58
11/16	11/17/2016	98812	Robertson's	Neuralia & Great Circle	883177	437.52	437.52
11/16	11/17/2016	98812	Robertson's	11007 Rome Beauty	884677	578.47	578.47
11/16	11/17/2016	98812	Robertson's	FOB PLT46 California City	888092	81.70	81.70
Total 98812:							1,120.27
11/16	11/17/2016	98813	S.C. Friends Tire Inc.	Tire Service	30578	35.00	35.00
11/16	11/17/2016	98813	S.C. Friends Tire Inc.	Tire Service	30593	43.00	43.00
11/16	11/17/2016	98813	S.C. Friends Tire Inc.	Tires Unit's 122, 123, 124	30620	811.47	811.47
11/16	11/17/2016	98813	S.C. Friends Tire Inc.	Tire Service	30631	41.00	41.00
11/16	11/17/2016	98813	S.C. Friends Tire Inc.	Tire Service	30649	20.50	20.50
11/16	11/17/2016	98813	S.C. Friends Tire Inc.	Tire Service	30656	15.00	15.00
11/16	11/17/2016	98813	S.C. Friends Tire Inc.	Tire Service	30661	10.00	10.00
11/16	11/17/2016	98813	S.C. Friends Tire Inc.	Tires Unit 411	30665	686.32	686.32
11/16	11/17/2016	98813	S.C. Friends Tire Inc.	Tire Service	30681	21.50	21.50
11/16	11/17/2016	98813	S.C. Friends Tire Inc.	Tires	30683	2,907.00	2,907.00
11/16	11/17/2016	98813	S.C. Friends Tire Inc.	Tire Service	30688	41.00	41.00
11/16	11/17/2016	98813	S.C. Friends Tire Inc.	Tire Service	30689	21.50	21.50
11/16	11/17/2016	98813	S.C. Friends Tire Inc.	Tire Service	30703	10.00	10.00
11/16	11/17/2016	98813	S.C. Friends Tire Inc.	Tire Service	30713	10.00	10.00
11/16	11/17/2016	98813	S.C. Friends Tire Inc.	Tire Service	30719	82.00	82.00
11/16	11/17/2016	98813	S.C. Friends Tire Inc.	Tire Service	30723	20.50	20.50
11/16	11/17/2016	98813	S.C. Friends Tire Inc.	Tire Service	30724	45.00	45.00
11/16	11/17/2016	98813	S.C. Friends Tire Inc.	Tire Service	30727	20.50	20.50
11/16	11/17/2016	98813	S.C. Friends Tire Inc.	Tire Service	30731	10.00	10.00
Total 98813:							4,851.29
11/16	11/17/2016	98814	Safety-Kleen Corp	30 GI Drum Open Blk Spill	71877805	289.10	289.10
Total 98814:							289.10
11/16	11/17/2016	98815	SC Communications	Dispatch Center Upgrade	5314	55,864.64	55,864.64
11/16	11/17/2016	98815	SC Communications	Voice & Data Repeater	97251	814.00	814.00
Total 98815:							56,678.64
11/16	11/17/2016	98816	Sequoia Equipment Company,	Backhoe's Repair Unit 223	4020	349.79	349.79
11/16	11/17/2016	98816	Sequoia Equipment Company,	Unit 415 Sewer Dept	4072	18.35	18.35
11/16	11/17/2016	98816	Sequoia Equipment Company,	Unit 801 SDI Dept Repair	4073	177.19	177.19
Total 98816:							545.33
11/16	11/17/2016	98817	Southern Calif Gas Company	10460 Heather Ave Cal City	PROG# 195512	5,394.11	5,394.11
Total 98817:							5,394.11
11/16	11/17/2016	98818	Sparkletts	Water	4687417 110416	19.90	19.90

GL Period	Check Issue Date	Check Number	Payee	Description	Invoice Number	Invoice Amount	Check Amount
Total 98818:							19.90
11/16	11/17/2016	98819	Statewide Safety & Signs	"Event Ahead" Signs	12004311	238.52	238.52
Total 98819:							238.52
11/16	11/17/2016	98820	Strong, Mike	Storage Rental for Remodel	110116	450.00	450.00
Total 98820:							450.00
11/16	11/17/2016	98821	Sunbelt Rentals, Inc	Scissor Lift Rental	62828944-004	1,063.60	1,063.60
Total 98821:							1,063.60
11/16	11/17/2016	98822	TechnoFlo Systems	McCrometer Parts	16591	6,394.24	6,394.24
Total 98822:							6,394.24
11/16	11/17/2016	98823	Terryberry	Longevity Pins	D02792	674.39	674.39
Total 98823:							674.39
11/16	11/17/2016	98824	Thomson Reuters - West	Law Book	835057123	216.08	216.08
Total 98824:							216.08
11/16	11/17/2016	98825	Uni-Com Supply Inc	Wiring Materials Fire Statio	190499	459.81	459.81
Total 98825:							459.81
11/16	11/17/2016	98826	United Rentals	Equipment Rental	141535990-001	172.01	172.01
Total 98826:							172.01
11/16	11/17/2016	98827	USA Bluebook	Lab Supplies	088298	62.46	62.46
Total 98827:							62.46
11/16	11/17/2016	98828	Valley Press	PH MMB	32265538	330.30	330.30
Total 98828:							330.30
11/16	11/17/2016	98829	VCES Bakersfield	Grader Blades	P505012199	970.60	970.60
Total 98829:							970.60
11/16	11/17/2016	98830	Verizon Business	landline Police Dept.	74840577	225.31	225.31
Total 98830:							225.31
11/16	11/17/2016	98831	Verizon Wireless	Cell Phone Service	9774405966	1,476.80	1,476.80
Total 98831:							1,476.80
11/16	11/17/2016	98832	Walters Wholesale Electric Co.	Fire Station Materials	S106249240.012	28,875.76	28,875.76
11/16	11/17/2016	98832	Walters Wholesale Electric Co.	Fire Station Materials	S106249240.014	3,496.04	3,496.04
11/16	11/17/2016	98832	Walters Wholesale Electric Co.	Fire Station Materials	S106580037.001	319.28	319.28
11/16	11/17/2016	98832	Walters Wholesale Electric Co.	Fire Station Materials	S106580037.002	131.53	131.53

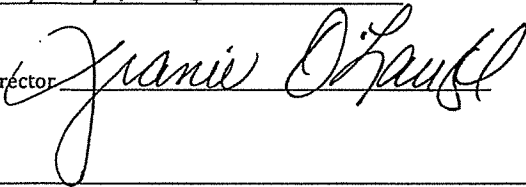


GL Period	Check Issue Date	Check Number	Payee	Description	Invoice Number	Invoice Amount	Check Amount
11/16	11/17/2016	98832	Walters Wholesale Electric Co.	Fire Station Materials	S106580037.003	1,293.31	1,293.31
11/16	11/17/2016	98832	Walters Wholesale Electric Co.	Fire Station Materials	S106580736.001	572.61	572.61
11/16	11/17/2016	98832	Walters Wholesale Electric Co.	Fire Station Materials	S106580736.002	28.83	28.83
11/16	11/17/2016	98832	Walters Wholesale Electric Co.	Fire Station Materials	S106580736.003	125.03	125.03
11/16	11/17/2016	98832	Walters Wholesale Electric Co.	Fire Station Materials	S106607268.001	131.34	131.34
11/16	11/17/2016	98832	Walters Wholesale Electric Co.	Fire Station Materials	S106607268.002	12.77	12.77
Total 98832:							34,986.50
11/16	11/17/2016	98833	Waste Management	Trash Service	3742147-2508-6	145.50	145.50
11/16	11/17/2016	98833	Waste Management	Trash Service	3742248-2508-2	1,404.55	1,404.55
Total 98833:							1,550.05
11/16	11/17/2016	98834	Wells Fargo Financial Leasing	Copier Lease	5003480742	735.28	735.28
11/16	11/17/2016	98834	Wells Fargo Financial Leasing	Copiers Overages City Hall	5003480743	564.30	564.30
Total 98834:							1,299.58
11/16	11/17/2016	98835	Witmer Public Safety Group,	Turnout Racks / Lockers	E1507257	4,277.83	4,277.83
Total 98835:							4,277.83
11/16	11/17/2016	98836	Yip, Cathy	Refund 9224 S. Loop	104744.09	26.17	26.17
Total 98836:							26.17
11/16	11/17/2016	98837	Zoll	Fire RMS Contract	9031581	210.00	210.00
Total 98837:							210.00
Grand Totals:							423,671.80

I HEREBY CERTIFY AS TO THE ACCURACY OF THE DEMANDS AND AVAILABILITY OF FUNDS:

Dated: 11-17-16

Finance Director



## Report Criteria:

Report type: Invoice detail

Bank Number = 1

Check Voided = no

## Report Criteria:

Report type: Invoice detail

Check.Check Number = 98838

Bank.Bank Number = 1

Check.Voided = no

GL Period	Check Issue Date	Check Number	Payee	Description	Invoice Number	Invoice Amount	Check Amount
11/16	11/17/2016	98838	Arroyo, Jordan	Per Diem Perishable Skills	110916	160.00	160.00
Total 98838:							160.00
Grand Totals:							160.00

I HEREBY CERTIFY AS TO THE ACCURACY OF THE DEMANDS AND AVAILABILITY OF FUNDS:

Dated: 11-17-16Finance Director Jeanie O'Laughlin

# CITY COUNCIL

November 22, 2016

**TO: Mayor and City Council**

**FROM: Craig C Platt Public Works Director  
Brenda Daverin Parks Manager**

**SUBJECT: Scout Island Waiver of Fees for Local Boy and Girl Scout Troops**

.....  
**BACKGROUND**

The dream of Scout Island started to fall in place in 2010, and through the efforts of city, city staff, local businesses, volunteers and the local scout troops 412 and 7572, this facility came to fruition.

Bob Barker Scout Lodge became a reality, in large part, due to our local scout troops 413 and 7572. Their countless hours of volunteer work and dedication towards the construction efforts of the Lodge is a testament to their core values of our scouts. The Troops continue to provide in-kind services to this facility and we understand that this will continue, thus reducing the monetary expenditures on maintenance and preservation for years to come and for many to enjoy.

Scouts new and old have a lot of pride in the work that was accomplished by the many members of our community that provided contributions to the building and funding of a place they can call their own.

City staff requested and has received a schedule of approximately 50 events over the next year; this will enable the city to rent the facility when not in use by the scouts to help cover the cost of building maintenance and utility's.

Due to these remarkable efforts, staff would like to provide the above mentioned troops a waiver of fees for this facility in recognition of their dedication and commitment to the betterment of both the Boy Scouts and the Community as a whole.

Under the current facility's fee structure this would amount to \$83.33 per month or \$1,000 over the next year.

**RECOMMENDATION**

Staff recommends council wave the facility fee for local troops 413 and 7572 not to exceed (5) years.

**FISCAL IMPACT**

\$1,000 per year

**ATTACHMENTS** None

CB 1.



# CITY COUNCIL

November 22nd, 2016

**TO: Successor Agency**  
**FROM: Tom Weil, Executive Director**  
**SUBJECT: Sale of Industrial Property**

**BACKGROUND:** The Successor Agency and the Oversight Board for California City has approved moving forward with the sale of 13.07 acres referred to as Assessor Parcel Nos. 30251010, 30251009, 30251008, 30251007, 30251006, 30251005 and further described in Exhibit A to be sold to Meister & Meister, Inc. for the purpose of building a six 28,000 square foot light deprivation greenhouse structures one 10,000 square feet metal structure with fencing, security systems, and parking. The purchase price is \$326,750 dollars with a \$10,000 dollar nonrefundable deposit at opening of escrow with First American Title located in Tehachapi, CA. An additional \$5,000 dollar refundable deposit will also be required at escrow opening. Buyer is also to pay \$3,500 dollars for the cost of the property appraisal.

Meister & Meister Inc. will have 120 days to complete their due diligence with a prorate share of the \$5,000 dollars being refundable based on date of cancellation as detailed in Section 3 Due Diligence Period and Inspections, Item B. Meister & Meister Inc. will then have up to one year of the issuing of the grant deed to complete the buildout of the structures with occupancy secured. Failure to complete this arrangement would allow the property to revert back to the Successor Agency for a sum of equal to one half the original purchase price.

**RECOMMENDATION:** The Successor Agency Board review and approve the Purchase and Sell Agreement as presented and authorize the Executive Director to sign all contractual document and to open escrow with First American Title.

**FISCAL IMPACT:** N/A

**ENVIRONMENTAL ACTION:** N/A

*The Finance Director has reviewed the staff report and finds the recommendations to be within the budget constraints of the Department.*

S.A.  
NBI.

**REAL PROPERTY PURCHASE AND SALE AGREEMENT  
AND  
MUTUAL ESCROW INSTRUCTIONS**

THIS REAL PROPERTY PURCHASE AND SALE AGREEMENT (the "Agreement") is entered effective on the date fully executed by and between the Successor Agency of the Former Redevelopment Agency of the City of California City, a separate public entity ("Successor Agency" or "SELLER") and Meister & Meister, Inc., a California corporation organized under the laws of the State of California ("BUYER").

**RECITALS**

A. The real property which is subject to this Agreement is generally located at the intersection of Lindberg Blvd. and Curtis Place California City, California, (commonly referred to as Airport Industrial Park and legally described in Exhibit "A" which is attached hereto and incorporated herein by reference (the "Property"). The property is vacant land. The Property can be found on Tract Map 5988, Assessor Map No. 302-51, a copy of which is attached hereto as Exhibit "D." The Property is further identified as Assessor Parcel Nos. 30251010, 30251009, 30251008, 30251007, 30251006, 30251005.

B. The California State Legislature enacted Assembly Bill x1 26 in 2011 to dissolve redevelopment agencies formed under the Community Redevelopment Law (Health and Safety Code sections 33000 et seq., as amended by Assembly Bill 1484 in 2012 and Senate Bill 107 in 2015) hereafter referenced as "Dissolution Law". All references to Health and Safety Code sections in this Agreement are references to the Dissolution Law.

C. Prior to the effective date of the Dissolution Law, the Redevelopment Agency of the City of California City (the "Former Redevelopment Agency") owned fee interest title in and to the Property.

D. On February 1, 2012 and upon dissolution of the Former Redevelopment Agency, the City of California City, acting in a separate limited capacity and as a separate legal entity, became the Successor Agency of the Former Redevelopment Agency of the City of California City ("Successor Agency").

E. Successor Agency ("SELLER") now holds fee title interest in and to the Property.

F. SELLER is responsible for the disposition of the Property in accordance with the procedures and requirements of Dissolution Law. Pursuant to Health and Safety Code Section 34177, successor agencies are required to dispose of assets and properties of the Former Redevelopment Agency expeditiously and in a manner aimed at maximizing the value.

G. In accordance with Health and Safety Code Section 34191.5, the SELLER prepared and the Oversight Board of the Successor Agency ("Oversight Board") approved a "Long-Range Property Management Plan" which included sale of the Property.

H. SELLER desires to convey fee title interest in and to the Property to BUYER in a manner consistent with the Dissolution Law requiring, inter alia, the disposition of its former property.

I. BUYER desires to purchase the Property from SELLER and SELLER desires to sell the Property on the terms and conditions contained in this Agreement.



J. It is the desire of the SELLER and BUYER and City of California City that within 12 months after the transfer of the Property to the BUYER, the BUYER shall have commenced and completed the construction of the Project; and

L. BUYER shall improve and use the Property for the Project that is the subject of the Development Plan as such Plan may be further defined, enhanced or modified pursuant to the requirements and conditions of the City of California City. (A copy of the proposed Development Plan is attached hereto as Exhibit "C") The Project includes the installation of a These lots will be developed with a 30,000 square foot steel structure including fencing, security systems and parking on each parcel within one year of the date the Property is transferred to the BUYER.

## **AGREEMENT**

The foregoing recitals are incorporated herein as if fully set forth. For valuable consideration and subject to the terms and conditions hereof, BUYER and SELLER agree as follows:

### **1. PURCHASE AND SALE.**

A. Conveyance of Property. SELLER agrees to sell to BUYER and BUYER agrees to purchase from SELLER, the Property on the terms and conditions set forth in this Agreement. BUYER and SELLER agree that the Property is vacant land. The Legal Description of the Property is attached as Exhibit A.

B. Purchase Price for the Property. The minimum purchase price shall be no less than \$25,000 per acre. The total purchase price to be paid by BUYER to the SELLER for the Property is Three Hundred Twenty Six Thousand Seven Hundred Fifty Dollars and Fifty Cents (\$326,750) (the "Purchase Price"). SELLER shall obtain at BUYER's cost and expense an appraisal of the Property ("Appraisal").

C. Reversion of Fee Title Interest. BUYER shall, within 12 months after the transfer of the Property to the BUYER, to have commenced and completed the construction of the Project; and, pursuant to the Grant Deed, if the BUYER fails to secure a Certificate of Occupancy within one year from the transfer of the Property to BUYER, then the Property shall automatically revert back to the SELLER. In event of such reversion to SELLER, SELLER shall refund to BUYER an amount equal to one-half of the Purchase Price without interest.

### **2. OPENING OF ESCROW AND DEPOSIT.**

A. Opening Escrow. Within five (5) business days of the Effective Date of this Agreement, SELLER shall open an escrow (the "Escrow") with raFirst American Title Company (the "Title Company" or "Escrow Holder") for conveyance of the Property to BUYER. This Agreement shall constitute mutual instructions to the Escrow Holder. The Opening Date of escrow shall be the date on which Escrow Holder receives a fully executed copy of this Agreement. BUYER and SELLER shall execute additional escrow instructions as may be required to enable the Escrow Holder to close the escrow consistent with the terms of this Agreement and as BUYER and SELLER may approve, which approval shall not be unreasonably withheld.

B. Deposit.

- (1) **Initial Non-Refundable Deposit.** BUYER shall deliver to SELLER a check in the sum of Ten Thousand (\$10,000.00) ("Initial Non-Refundable Deposit"). Immediately upon the opening of Escrow, SELLER shall deliver the Initial Non-Refundable Deposit to Escrow Holder for the benefit of BUYER. The Initial Non-Refundable Deposit shall not be refunded for any reason.
- (2) **Additional Refundable Deposit.** Within ten (10) days of the Effective Date of this Agreement, BUYER shall deposit into an additional sum of Five Thousand Dollars (\$5,000.00). The Additional Refundable Deposit may be refunded as set forth in B(4), below.
- (3) **DEPOSIT.** Collectively, the Initial Non-Refundable Deposit and the Additional Refundable Deposit may be referred to as the "Deposit".
- (4) **Conditions for Refund of the Additional Refundable Deposit.** The Additional Refundable Deposit shall become nonrefundable to BUYER upon expiration of the Due Diligence Period if this Agreement has not been terminated; except that the Additional Refundable Deposit shall be refundable to BUYER if: (i) Escrow fails to close due to SELLER's default or breach of its representations or warranties under this Agreement or (ii) Closing fails to occur due to the failure of any condition to Closing set forth in this Agreement which is for the benefit of the BUYER. A full refund or partial refund of Additional Refundable Deposit may also be made to BUYER pursuant to Section 3.B of this Agreement. If upon termination of this Agreement SELLER is entitled to retain any portion of the Deposit, then BUYER shall within one (1) business day thereafter instruct Escrow Holder to immediately release such portion of the Deposit to SELLER (which obligation shall survive the termination of this Agreement). Upon termination of this Agreement, the parties shall have no further obligations hereunder except for the Surviving Obligations. As used in this Agreement, "Surviving Obligations" shall mean all obligations of BUYER and/or SELLER which are expressly stated in this Agreement to survive Close of Escrow (defined in Section 6.A) or termination of this Agreement.
- (5) **Handling of Deposit.** The Deposit shall be deposited in an interest bearing money market or savings account with a national banking association or federally chartered savings and loan association, which interest shall accrue to the benefit of the BUYER and shall be applied to the Purchase Price at the Closing.

3. **DUE DILIGENCE PERIOD AND INSPECTIONS.**

A. Due Diligence Period. BUYER shall have until one hundred twenty (120) days following the Effective Date to conduct BUYER's due diligence, as BUYER deems necessary, but at BUYER's sole cost and expense, including but not limited the right to review and approve the Property Materials, to inquire and meet with all governmental or quasi-governmental authorities, and to inspect and approve the physical conditions of and all other matters concerning

the Property (the "Due Diligence Period"). If BUYER is not satisfied for whatever reason, or no reason, with the condition of the Property, BUYER has the affirmative duty to terminate this Agreement not later than the expiration of the Due Diligence Period by providing SELLER and Escrow Holder written notice thereof ("Buyer's Termination Notice") prior to the end of the Due Diligence Period. If BUYER fails to deliver BUYER's Termination Notice, then, BUYER shall be deemed to have elected not to terminate this Agreement.

B. Return of Deposit During Due Diligence Period. Upon receipt of Buyer's Termination Notice in escrow pursuant to Section 3.A., the Additional Refundable Deposit or portion thereof shall be returned as follows:

- (i) The full Additional Refundable Deposit shall be refunded upon notification by the Buyer within the first (30) days of the Due Diligence Period that it is cancelling the contract.
- (ii) Seventy five percent (75%) of the Additional Refundable Deposit shall be refunded upon notification by the Buyer more than thirty (30) but less than (60) days of the Due Diligence Period that it is cancelling the contract.
- (iii) Fifty percent (50%) of the Additional Refundable Deposit shall be refunded upon notification by the Buyer more than sixty (60) but less than ninety (90) days of the Due Diligence Period that it is cancelling the contract.
- (iv) Twenty five percent (25%) of the Additional Refundable Deposit shall be refunded upon notification by the Buyer more than ninety (90) but less than one hundred twenty (120) days of the Due Diligence Period that it is cancelling the contract.

After the Due Diligence Period, if the Agreement is not terminated pursuant to Section 3.A., the Additional Refundable Deposit shall become nonrefundable.

C. Property Materials. Not later than three (3) days following the Effective Date, SELLER shall deliver to BUYER the following documents relating to the Property to the extent in the possession or control of SELLER (collectively, the "Property Materials"): (i) all soils, groundwater, environmental, property inspection and other reports and test results relating to the physical condition of the Property, including without limitation engineers' and consultants' plans, reports, and studies relating to the physical condition of the Property; (ii) all notices of violations of laws, if any, from any governmental or quasi-governmental authorities related to the Property; and (iii) other correspondence and notices from any governmental or quasi-governmental authorities related to the Property.

D. Access. Subject to this Section below, until the earlier to occur of the Close of Escrow or termination of this Agreement, BUYER shall have the right to enter upon the Property to inspect, investigate and conduct tests upon the Property, as BUYER, in its sole discretion deems necessary but at its sole cost and expense. BUYER shall keep the Property free and clear of any and all liens related to BUYER's inspections, test, and investigations. All entry onto and inspections of the Property shall be subject to the following:

- (1) BUYER shall give SELLER not less than one (1) business day prior notice of any entry onto the Property by BUYER or by BUYER's agents, employees, consultants, and contractors (collectively, "BUYER's Representatives").

- (2) If the Property is physically damaged in connection with any of BUYER's or BUYER's Representatives' activities on, in or about the Property pursuant to this Agreement, then BUYER, at BUYER's sole cost and expense, shall promptly repair such damage.

4. (3) **BUYER shall indemnify, protect, defend (with counsel reasonably acceptable to SELLER) and hold harmless SELLER and each of SELLER's employees, agents, officer, directors, and City Council for, from and against any and all claims, damages, liens, suits, causes of action, legal or administrative proceedings, finds, penalties, judgments, demands, obligations, costs, liabilities and losses (including mechanics' liens) and expenses (including, without limitation, reasonable attorneys' fees) (all collectively and each individually referred to herein as the "Claims and Liabilities") for property damage (both real and personal), death or personal injury to the extent caused by the acts or negligence of BUYER or BUYER's Representatives acting on behalf of BUYER pursuant to this Agreement while on, in, or about the Property, subject to this Section 4.C below, which obligation shall survive Close of Escrow or termination of this Agreement.**

## **5. TIMING OF DEVELOPMENT**

BUYER shall develop the Project and shall have successfully applied for and received building permits from the City of California City within ninety (90) days of the effective date of this Agreement; and BUYER shall begin construction of the Project within a reasonable time after the issuance of building permits, and, shall complete construction and secure a Certificate of Occupancy within twelve (12) months after the transfer of the Property to the BUYER. BUYER acknowledges and agrees that should BUYER fail to comply with its obligations under this Section, then (1) pursuant to the Grant Deed and this Agreement, fee title interest to the Property shall revert back to the SELLER; (2) Upon reversion of fee title interest to the SELLER, SELLER shall refund to BUYER no more than one-half of the Purchase Price for the Property without interest as provided in the Purchase and Sale Agreement; (3) City of California City shall have the right to utilize in any way and/or sell any and all architectural, engineering, and construction plans and specifications for the Project without compensation to the BUYER for same; and (4) City of California City shall, at its option, make a claim against the Performance Bond or assign to a third party the City's right to make such a claim.

## **6. PERFORMANCE BOND**

Concurrently with execution of this Agreement, BUYER shall deliver to City of California City a performance bond in the sum of the amount that is equal to the total Project cost, on the forms provided by the City Clerk, which secures the faithful performance of this Agreement and completion of the Project. The bond shall contain the original notarized signature of an authorized officer of the surety and affixed thereto shall be a certified and current copy of his power of attorney. The bonds shall be unconditional and remain in force during the entire term of the Agreement and shall be null and void only if the BUYER promptly and faithfully performs all terms and conditions of this Agreement.

## **7. PROJECT APPROVALS**

BUYER shall secure, at BUYER'S expense, all licenses, permits, authorizations, including but not limited to any land use approvals, required for the Project and use of the Property from all applicable government and/or regulatory entities ("Governmental Approvals"). SELLER expressly grants to BUYER a right of access to the Property to perform surveys, soils tests, and other engineering procedures or environmental studies on

the Property necessary to determine that BUYER's use of the Property for the Project is compatible with BUYER's engineering specifications, system design, operations and Governmental Approvals.

Notwithstanding anything stated in this Agreement to the contrary, BUYER understands that the execution of this Agreement is not a guarantee by the City that the proposed use will be allowed on the subject parcel. BUYER shall not be entitled to occupy the Premises, and shall not be entitled to utilize the Premises for the proposed use, unless and until BUYER first obtains any and all required Governmental Approvals and land use entitlements for the Project on the Premises, including but not limited to BUYER's compliance with any requirements of the California Environmental Quality Act ("CEQA"). The City is not obligated to grant any such approvals, and the process of reviewing and granting of such approvals with respect to the Project on the Premises will be subject to the standard independent review process and procedures established by the City from time to time. Moreover, nothing herein shall be construed as a waiver of the City's right to defend, to the fullest extent of the law, its use of its discretionary authority and executive powers. This Agreement shall be void and of no effect if the land use approvals are not granted, with no further right or obligation of either party to each other.

## **8. REPRESENTATIONS, WARRANTIES AND COVENANTS.**

A. Representations by SELLER. SELLER represents and warrants to BUYER based on information and belief as follows:

- (1) No other consent or approval is required for the execution and delivery of this Agreement by SELLER or the performance by SELLER of its obligations hereunder other than those already obtained by SELLER, or specifically set forth in this Agreement.
- (2) To the best of SELLER's knowledge, based on information and belief presently available to SELLER at the time of this Agreement, the Property Materials delivered to BUYER are complete copies of such documents in the actual possession or control of SELLER, and are all of the Property Materials known to be in the actual possession or control of SELLER. Prior to Closing, SELLER agrees to promptly deliver to BUYER any additional documents received by SELLER relating to the physical condition, use, and operation of the Property.
- (3) SELLER has not received written notice from any governmental or quasi-governmental authority of existing violations of any laws or other legal requirements specifically with respect to the Property.
- (4) As of the Closing, there shall be no outstanding contracts made by SELLER for any improvements to the Property which have not been fully paid for, and SELLER shall cause to be discharged and removed as an exception to title all mechanics' and materialmen's liens arising from any labor and material furnished prior to the Closing (other than those caused by work performed by BUYER).

The representations and warranties of SELLER set forth in this Section 4.A shall survive the Close of Escrow.

B. Representations by BUYER. BUYER represents and warrants to SELLER that no consent or approval from anyone other than BUYER is required for the execution and delivery of this Agreement by BUYER or the performance of BUYER of its obligations hereunder. The

representations and warranties of BUYER set forth in this Section 4.B shall survive the Close of Escrow.

C. Mutual Representations and Indemnity. Each party represents and warrants to the other that it has had no dealings with any real estate broker, agent, or finder in connection with the negotiation of this Agreement. In the event of a claim for broker's fee, finder's fee, commission or other similar compensation in connection with this Agreement, BUYER, if such claim is based upon an alleged relationship with or any agreement alleged to have been made by BUYER, hereby agrees to indemnify, protect and defend with counsel reasonably acceptable to SELLER and hold SELLER and its officers, agents, employees, successors and assigns harmless against any and all such claims and liabilities which SELLER may or does sustain or incur by reason of such claim or claims. In the event of a claim for broker's fee, finder's fee, commission or other similar compensation in connection herewith, SELLER, if such claim is based upon an alleged relationship with or any agreement alleged to have been made by SELLER, hereby agrees to indemnify, protect, and defend with counsel reasonably acceptable to BUYER, and hold BUYER, officers, agents, employees, successors and assigns harmless against any and all Claims and Liabilities which BUYER may sustain or incur by reason of such claim or claims. The provisions of this Section 4.C shall survive the Close of Escrow or termination of this Agreement.

D. Covenants of SELLER. SELLER hereby agrees as follows:

- (1) After the Effective Date and prior to the Closing, no part of the Property, or any interest therein, shall be sold, encumbered or otherwise transferred without BUYER's prior written consent.
- (2) Prior to Closing, SELLER Shall promptly notify BUYER of any fact or circumstance of which SELLER becomes aware which would make any of SELLER's representations and warranties untrue in any material respect, or any covenant of SELLER under this Agreement incapable or improbably of being cured or performed.

E. Covenants of BUYER.

- (1) BUYER shall not cause or be the reason for the imposition of any mechanics' and materialmen's liens to be placed on or attached to the Property prior to Closing.
- (2) Prior to Closing, BUYER shall promptly notify SELLER of any fact or circumstance of which BUYER becomes aware which would make any of BUYER's representations and warranties untrue in any material respect, or any covenant of BUYER under this Agreement incapable of being cured or performed.

## 9. AS-IS.

A. "AS-IS" Purchase. BUYER EXPRESSLY ACKNOWLEDGES AND AGREES, AND REPRESENTS AND WARRANTS TO SELLER, THAT, EXCEPT FOR THE SELLER REPRESENTATIONS AND COVENANTS EXPRESSLY SET FORTH HEREIN BUYER IS PURCHASING THE PROPERTY "AS-IS", AND "WITH ALL FAULTS", AFTER SUCH INSPECTION, ANALYSIS, EXAMINATION AND INVESTIGATION BUYER DESIRES TO MAKE AND EXPRESSLY WITHOUT SELLER'S COVENANT, WARRANTY OR REPRESENTATION AS TO PHYSICAL CONDITION, TITLE, LEASES, RENTS, REVENUES, INCOME, EXPENSES, OPERATION, ACCESS, ZONING OR OTHER REGULATION, COMPLIANCE WITH LAW, SUITABILITY FOR PARTICULAR

PURPOSES OR ANY OTHER MATTER WHATSOEVER, EXCEPT FOR THE SELLER REPRESENTATIONS AND COVENANTS SET FORTH IN THIS AGREEMENT OR ANY REPRESENTATIONS AND COVENANTS OF SELLER SET FORTH IN ANY DOCUMENT DELIVERED BY SELLER AT THE CLOSING. SELLER HAS NO OBLIGATION TO MAKE REPAIRS, REPLACEMENTS OR IMPROVEMENTS TO THE PROPERTY, OR TO PAY ANY FEES, COSTS OR EXPENSES RELATED TO THE PROPERTY EXCEPT AS PROVIDED IN THIS AGREEMENT. BUYER ACKNOWLEDGES AND AGREES THAT, EXCEPT FOR THE SELLER REPRESENTATIONS AND COVENANTS HEREIN AND ANY REPRESENTATIONS AND COVENANTS OF SELLER SET FORTH IN ANY DOCUMENT DELIVERED BY SELLER AT THE CLOSING, SELLER HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY NEGATES AND DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO: (A) THE VALUE OF THE PROPERTY; (B) THE INCOME TO BE DERIVED FROM THE PROPERTY; (C) THE SUITABILITY OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH BUYER MAY CONDUCT THEREON, INCLUDING THE POSSIBILITIES FOR DEVELOPMENT OF THE PROPERTY; (D) THE HABITABILITY, MARKETABILITY, MERCHANTABILITY, PROFITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY; (E) THE MANNER, QUALITY, STATE OF REPAIR OR LACK OF REPAIR OF THE PROPERTY; (F) THE NATURE, QUALITY OR CONDITION OF THE PROPERTY, INCLUDING WITHOUT LIMITATION, SOILS AND GEOLOGY; (G) THE COMPLIANCE OF OR BY THE PROPERTY OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY; (H) COMPLIANCE WITH ANY ENVIRONMENTAL PROTECTION, POLLUTION OR LAND USE LAWS, RULES, REGULATION, ORDERS OR REQUIREMENTS, INCLUDING BUT NOT LIMITED TO, TITLE III OF THE AMERICANS WITH DISABILITIES ACT OF 1990, CALIFORNIA HEALTH AND SAFETY CODE, THE FEDERAL WATER POLLUTION CONTROL ACT, THE FEDERAL RESOURCE CONSERVATION AND RECOVERY ACT, THE U.S. ENVIRONMENTAL PROTECTION AGENCY REGULATIONS AT 40 CFR PART 261, CERCLA, AS AMENDED, RCRA, THE CLEAN WATER ACT, THE SAFE DRINKING WATER ACT, THE HAZARDOUS MATERIALS TRANSPORTATION ACT AND THE TOXIC SUBSTANCE CONTROL ACT, AS ANY OF THE FOREGOING MAY BE AMENDED FROM TIME TO TIME AND REGULATIONS PROMULGATED UNDER ANY OF THE FOREGOING FROM TIME TO TIME; (I) THE PRESENCE OR ABSENCE OF HAZARDOUS MATERIALS AT, ON, UNDER, OR ADJACENT TO THE PROPERTY; (J) THE CONTENT, COMPLETENESS OR ACCURACY OF THE PROPERTY DOCUMENTS AND ANY OFFERING CIRCULAR OR INFORMATION PACKAGE PROVIDED BY SELLER; (K) THE CONFORMITY OF THE PROPERTY TO PAST, CURRENT OR FUTURE APPLICABLE ZONING OR BUILDING REQUIREMENTS; (L) DEFICIENCY OF ANY DRAINAGE OR UNDERSHORING; (M) THAT THE PROPERTY MAY BE LOCATED ON OR NEAR EARTHQUAKE FAULTS; (N) THE EXISTENCE OR NON-EXISTENCE OF LAND USE, ZONING OR BUILDING ENTITLEMENTS AFFECTING THE PROPERTY; (O) THE ENTITLEMENT STATUS OF THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, GENERAL PLAN STATUS, SPECIFIC PLAN STATUS, ZONING STATUS, SUBDIVISION STATUS UNDER THE CALIFORNIA SUBDIVISION MAP ACT; (P) THE APPLICABILITY OF THE FEDERAL OR CALIFORNIA ENDANGERED SPECIES ACTS AND THE EXISTENCE OF ANY SPECIES PROTECTED THEREUNDER; (Q) ANY NON-COMPLIANCE OF THE PROPERTY OR ANY IMPROVEMENTS; (R) ANY ERRORS, INACCURACIES OR DEFECTS IN THE WORK PRODUCT RELATING TO THE PROPERTY; OR (S) ANY OTHER MATTER CONCERNING THE PROPERTY. BUYER FURTHER ACKNOWLEDGES AND AGREES THAT HAVING BEEN GIVEN THE OPPORTUNITY TO INSPECT THE PROPERTY AND HAVING OBTAINED AND EXAMINED SUCH INFORMATION AND



DOCUMENTATION AFFECTING THE PROPERTY AS BUYER HAS DEEMED NECESSARY OR APPROPRIATE, BUYER IS RELYING SOLELY ON ITS OWN INVESTIGATIONS AND REVIEW, AND NOT ON ANY INFORMATION PROVIDED OR TO BE PROVIDED BY SELLER OTHER THAN THE SELLER REPRESENTATIONS AND COVENANTS SET FORTH HEREIN AND ANY REPRESENTATIONS AND COVENANTS OF SELLER SET FORTH IN ANY DOCUMENT DELIVERED BY SELLER AT THE CLOSING. AT THE CLOSING BUYER SHALL HAVE INDEPENDENTLY CONFIRMED, SUBJECT TO THE SELLER REPRESENTATIONS AND COVENANTS SET FORTH HEREIN AND ANY REPRESENTATIONS AND COVENANTS OF SELLER SET FORTH IN ANY DOCUMENT DELIVERED BY SELLER AT THE CLOSING, TO ITS SATISFACTION ALL INFORMATION THAT IT CONSIDERS MATERIAL TO ITS PURCHASE OF THE PROPERTY, INCLUDING WITHOUT LIMITATION THE EXISTENCE OF ANY AND ALL MUNICIPAL FEES, CHARGES, OR OTHER LIABILITIES THAT MAY EXIST WITH RESPECT TO THE PROPERTY. EXCEPT FOR THE SELLER REPRESENTATIONS AND COVENANTS, BUYER ASSUMES ALL RISK OF DISCOVERING AND UNDERSTANDING ALL FACTS AND CIRCUMSTANCES RELATING TO THE PROPERTY, INCLUDING PHYSICAL FEATURES AND CONDITIONS, PERMIT AND ENTITLEMENT STATUS, DEVELOPMENT OBLIGATIONS, LIABILITIES, AND OTHER FACTORS RELEVANT TO THE DEVELOPMENT OF THE REAL PROPERTY. SELLER FURTHER ADVISES BUYER THAT PURSUANT TO CALIFORNIA CIVIL CODE SECTION 1102, 1103.1(A), 3434 AND OTHER APPLICABLE PROVISIONS OF CALIFORNIA LAW, SELLER IS NOT LIABLE AND SHALL NOT BE HELD LIABLE FOR ANY LOSS OR DAMAGE OCCASIONED BY ANY CONSTRUCTION DEFECT OR OTHER DEFECT IN THE REAL OR PERSONAL PROPERTY SO DESIGNED, MANUFACTURED, CONSTRUCTED, REPAIRED, MODIFIED OR IMPROVED OR FOR ANY LOSS OR DAMAGE RESULTING FROM THE FAILURE OF SELLER OR ANY OTHER PARTY THAT PARTICIPATED IN THE DESIGN OR CONSTRUCTION OF THE PROPOSED IMPROVEMENTS ON THE PROPERTY TO USE DUE CARE IN THE DESIGN, MANUFACTURE, CONSTRUCTION, REPAIR, MODIFICATION OR IMPROVEMENT OF SUCH REAL OR PERSONAL PROPERTY. THIS PROVISION WILL SURVIVE THE CLOSING AND CONSTITUTE MATERIAL CONSIDERATIONS FOR SELLER'S AGREEMENT TO SELL THE PROPERTY TO BUYER.

B. Release. Effective upon the Closing, except as otherwise provided herein or in any documents delivered at the Closing, BUYER, on behalf of itself, and the BUYER representatives fully, unconditionally, and irrevocably release SELLER from any and all claims that BUYER may now have or hereafter acquire against SELLER for any liabilities arising from or related to Property, its design, development, entitlements or any conditions existing or events occurring on, in or about the Property before the Closing, including without limitation any construction defects, or other conditions, latent or otherwise, including, without limitation, environmental matters affecting the Property or any portion thereof; provided, however, that nothing herein shall constitute a release of any other claims for liabilities other than as specified above. The foregoing release includes claims of which BUYER is presently unaware or which Buyer does not presently suspect to exist which, if known by BUYER, would materially affect Buyer's release of the Released Parties. In connection with this release, BUYER specifically waives the provision of California Civil Code Section 1542, which provides as follows:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR EXPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN TO HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.**



This release by BUYER shall constitute a complete defense to any claim, cause of action, defense, contract, liability, indebtedness or obligation released pursuant to this release. Nothing in this release shall be construed as (or shall be admissible in any legal action or proceeding as) an admission by SELLER or any other released party that any defense, indebtedness, obligation, liability, claim or cause of action exists which is within the scope of those hereby released.

\_\_\_\_\_  
BUYER'S Initials

\_\_\_\_\_  
SELLER'S Initials

#### **10. BUYER'S ACKNOWLEDGMENT OF ABX1 26 AND INDEMNIFICATION OF CITY AND SELLER**

BUYER acknowledges and agrees that the SELLER's original acquisition of the Property was pursuant to Health and Safety Code Section 33000 et. seq. otherwise known as the California Redevelopment Law. BUYER further acknowledges and agrees that the SELLER is selling the Property as a result of the California Supreme Court's decision in California Redevelopment Association v. Matosantos which upheld ABX1 26 which dissolved all redevelopment agencies operating within the State of California. BUYER acknowledges and agrees that under ABX1 26, the SELLER's sale the Redevelopment agency Property is subject to a number of legal requirements ("ABX1 26 Sale Approvals") in order to complete this sale. BUYER acknowledges and agrees that the SELLER has no control over ABX1 26 Sales Approvals. BUYER hereby acknowledges and agrees that it will not bring any claims, demands, suits, actions or proceedings of any kind or nature against the SELLER or the City of California City, their respective agents, employees, consultants or volunteers related to ABX1 26 Sale Approvals of the Redevelopment Property. BUYER shall indemnify, defend, and hold harmless the SELLER and City of California City against any and all claims, challenges, and/or legal proceedings of any kind brought by anyone seeking to void and set aside this Agreement and/or transfer of the Property on any basis; or, otherwise, challenging the sale price.

INITIALS OF BUYER:

INITIALS OF SELLERS:

#### **11. CLOSING AND ESCROW INSTRUCTIONS.**

A. Closing. The consummation of the purchase and sale of the Property (the "Closing" or "Close of Escrow") shall take place on the Closing Date, through the escrow established with Escrow Holder ("Escrow"), as evidence by recordation of the Grant Deed described in Section 6.B. in the Official Records of Kern County, California ("Official Records"). The "Closing Date" shall be 30 days after the last date of the Due Diligence Period or such earlier date as the parties may mutually agree upon (without obligation to so agree).

##### **B. SELLER'S Deposits.**

Prior to Closing, in sufficient time prior thereto to allow Closing on the Closing Date, SELLER shall cause to be delivered into the Escrow:

(1) A Grant Deed executed by SELLER, with signatures notarized for recording in the Official Records, conveying to BUYER the Property, in the form of Exhibit "B" attached hereto ("Grant Deed"), which Grant Deed shall be recorded in the Official Records at the Closing;

(2) An affidavit in compliance with the Foreign Investment and Real Property Tax Act and a California Tax Withholding Form 593-C, executed by SELLER (the "Non-Foreign

Status Certificate” and “Form 593-C”, respectively), certifying that SELLER is not subject to withholding under federal or state law; and

(3) Such additional instruments or documents reasonably required by Escrow Holder in order to consummate the purchase and sale of the Property in accordance with the terms and conditions of this Agreement, to the extent consistent with this Agreement, including without limitation escrow instructions and an owner’s affidavit reasonably required by the Title Company to enable the Title Company to issue the Title Policy to BUYER at the Closing.

C. BUYER’S Deposits. Prior to Closing, in sufficient time prior thereto to allow Closing to occur on the Closing Date, BUYER shall cause to be delivered into the Escrow the following:

- (1) In immediately available funds a sum equal to the Purchase Price, plus BUYER’s estimated Closing Costs, less the Deposit, together with any interest earned thereon; and
- (2) Such additional instruments or documents reasonably required by Escrow Holder in order to consummate the purchase and sale of the Property in accordance with the terms and conditions of this Agreement, to the extent consistent with this Agreement, including without limitation escrow instructions.

D. Failure to Timely Close Escrow. If the Closing does not occur by the Closing Date, then either party not then in default may elect to terminate this Agreement and cancel Escrow by giving written notice of such termination and cancellation to the other party. If neither party is in default, then the cost of cancellation of the Escrow shall be shared equally between BUYER and SELLER, unless otherwise expressly provided in the Agreement. If only one of the parties hereto is in default, then such defaulting party shall pay for the entire cost of cancellation of the Escrow. The termination of this Agreement and cancellation of the Escrow, as provided herein, shall be without prejudice to whatever legal rights, as said rights may be limited by the terms contained in this Agreement, that BUYER or SELLER may have against each other arising out of this Agreement and the Escrow, which rights shall survive the termination of this Agreement.

E. Conditions to Closing.

- (1) **BUYER’S Conditions.** In addition to all other conditions to the completion of the transaction described in this Agreement, SELLER and BUYER agree that the Closing of the sale and purchase contemplated by this Agreement is subject to satisfaction, approval or waiver by BUYER of the matters specified below in this Section 6.E.(1), which conditions are solely for the benefit of the BUYER and can be unilaterally waived by BUYER:
  - i. The Title Company shall be irrevocably committed to issue to BUYER at the Closing an Owner’s Standard ALTA policy of title insurance in the amount of the Purchase Price, insuring the Property is vested in BUYER subject to no exceptions other than the Permitted Exceptions, in the form and with endorsements to be approved by BUYER prior to the end of the Due Diligence Period (the “Title Policy”);
  - ii. There shall have been no material adverse change in the physical condition of the Property from the Effective Date through the Closing Date; and

- iii. SELLER shall not be in material default of SELLER's obligations under this Agreement, and all of SELLER's express representations and warranties set forth in this Agreement shall continue to be true, correct, and unchanged in all material respects as of the Closing.
- (2) **SELLER's Conditions.** In addition to all other conditions to the completion of the transaction described in this Agreement, SELLER and BUYER agree that the Closing of the sale and purchase contemplated by this Agreement is subject to satisfaction, approval or waiver by SELLER of the matters specified below in this Section, which conditions are solely for the benefit of SELLER and can be unilaterally waived by SELLER:
  - i. BUYER shall not be in material default of BUYER's obligations under this Agreement, and all of BUYER's express representations and warranties set forth in this Agreement shall continue to be true, correct, and unchanged in all material respects as of the Closing.
  - ii. BUYER shall have acquired (1) all the entitlements, including an approved set of Development Plans for the Project; (2) any and all financing, if any; and (3) building permits to start the actual construction of the Project

F. Title. At Closing, title to the Property shall be conveyed to BUYER subject to only the following exceptions (collectively, "Permitted Exceptions"): (i) non-delinquent real property taxes and assessments (if any), (ii) the standard pre-printed exceptions and exclusions contained in an ALTA Standard coverage owner's policy of title insurance, and (iii) liens and encumbrances resulting from the acts of BUYER or any of BUYER's representatives. Anything to the contrary in this Agreement notwithstanding, SELLER shall pay or discharge, or cause to be removed, whether or not specifically objected to by BUYER, all monetary liens or encumbrances affecting the Property (other than non-delinquent real property taxes and assessments, and other than monetary liens and encumbrances created by BUYER, but otherwise including without limitation all deeds of trust and mortgages and other encumbrances relating thereto, judgment liens, mechanics' and materialmen's liens or claims of lien, and liens relating to defaulted taxes), and all liens or encumbrances voluntarily created or assumed by SELLER prior to the Close of Escrow; and in no event shall SELLER be allowed to elect or be deemed to have elected not to pay, discharge or cause to be removed such matters.

If following the Effective Date, the Title Company discloses additional exceptions not previously disclosed as exceptions in the preliminary title report delivered to BUYER before the Effective Date, other than the Permitted Exceptions, then unless BUYER accepts to accept title as it then is without reduction of the Purchase Price, BUYER may, at its option determined in BUYER's sole and absolutely discretion, terminate this Agreement, in which event the Nonrefundable Consideration shall be released to SELLER if such exception has not been caused by SELLER's default under this Agreement (and otherwise it shall be released to BUYER), and the Deposit Balance shall be returned to BUYER.

G. Prorations.

- (1) Subject to Subsection (2) below, all revenues and expenses of the Property, including without limitation real property taxes, special taxes, assessments (if any) shall be prorated and apportioned between BUYER and SELLER as of the Closing Date, so that SELLER bears all expenses with respect to the Property, and has the benefit of all income with respect to the Property, through and including the date immediately preceding the Closing Date. If any portion of the Property is affected by any assessment or other charge, whether for taxes or bonds, or interest thereon, which is or may become

payable in installments, and an installment payment of such assessment is then a lien due and payable as part of the annual ad valorem property tax bill received for the Property, then such installment shall be prorated as of the Closing Date; and if any such assessment or other charge is not payable in installments or are not billed as part of the annual ad valorem property tax bill for the Property, shall be paid in full by SELLER at the Closing. Notwithstanding the foregoing, SELLER shall be solely responsible for clearing all possessory interest taxes from the Property not later than the Closing. Any necessary adjustment due either party on receipt of a supplemental tax bill will be made by the parties outside of this Escrow within the time required by this Section 10 below, which obligation shall survive the Closing.

- (2) Subject to Subsection (1) above, if any of the items to be prorated as of Closing cannot be finally determined as of Closing, the prorations shall be made at Closing based on the last available information, and post-closing adjustments between BUYER and SELLER shall be made within twenty (20) days after the date that the actual amounts are determined, and if payment is not made within this twenty (20) day period the party owing such sums shall pay interest thereon, at the rate of ten percent (10%) per annum, from the date of delivery of the bill to the non-paying party to the date of payment. This subsection shall survive the Closing.

H. Title Charges, Other Closing Costs. If this transaction is terminated by BUYER prior to the expiration of the Due Diligence Period for any reason other than SELLER's default hereunder, BUYER shall pay all escrow costs billed by the Escrow Holder and Title Company. If this transaction closes as provided in this Agreement:

- (1) SELLER shall pay that portion of the premium for the Title Policy attributable to ALTA Standard Owner's Policy of coverage (exclusive of endorsements), and the escrow fees;
- (2) BUYER shall pay recording fees for the recording of the Grant Deed (if any), and the portion of the premium for the Title Policy attributable to an ALTA Extended Policy coverage and endorsements issued with the Title Policy, if BUYER so elects to obtain an ALTA Extended Policy; and
- (3) All other Closing costs, if any, shall be allocated between SELLER and BUYER in accordance with the custom in Kern County, California.

I. Disbursement of Funds. On the Close of Escrow, Escrow Holder shall be instructed to disburse the Purchase Price less: (i) SELLER's share of prorations as determined pursuant to Subsection G immediately above, and (ii) SELLER share of costs of Escrow in immediately available funds, as directed by SELLER.

J. Delivery of Documents. Escrow Holder shall be instructed to, upon the Close of Escrow, deliver all instruments and documents as follows:

- (1) Escrow Holder shall be instructed to deliver to SELLER:
  - i. A copy of the Grant Deed executed by SELLER, showing recording information, and certified by the Escrow Holder as being

a true and complete copy of the Grant Deed recorded in the Official Records;

- ii. A copy of the Non-Foreign Status Certificate, and Form 593-C;
- iii. A copy of all other documents deposited into Escrow; and
- iv. The Purchase Price, less the costs and prorations chargeable to SELLER pursuant to this Agreement.

(2) Escrow Holder shall be instructed to deliver to BUYER following the Close of Escrow the following:

- i. A copy of the Grant Deed signed by SELLER, showing recording information, and certified by the Escrow Holder as being a true and complete copy of the Grant Deed recorded in the Official Records;
- ii. A copy of the Non-Foreign Status Certificate, and Form 593-C;
- iii. The original Title Policy; and
- iv. A copy of all other documents deposited into Escrow.

## **12. CONDEMNATION.**

If between the date of this Agreement and the Closing Date any condemnation or eminent domain proceedings are initiated which would result in the taking of any portion of the Property, then BUYER may terminate this Agreement by written notice of the commencement or occurrence of any condemnation or eminent domain proceedings affecting the Property. If such proceedings are initiated for the taking of any part of the Property, BUYER shall then notify SELLER, within ten (10) business days after BUYER's receipt of SELLER's notice (but in no event later than the Closing Date), whether or not BUYER elects to terminate this Agreement. If BUYER elects not to terminate this Agreement or fails to make an election within such ten (10) business day period or prior to the Closing Date, whichever is earlier, then BUYER shall be deemed to have elected to proceed with the Closing without any reduction to the Purchase Price, in which event SELLER shall assign to BUYER at Closing all of SELLER's right, title and interest in and to any award made in connection with such condemnation or eminent domain proceedings, or if such payment has been received by SELLER such payment shall be credited to BUYER at the Closing, and Closing shall be delayed, if necessary, until the later to occur of (i) the Closing Date, or (ii) ten (10) days after the expiration of the ten (10) business day period. If this Agreement is terminated in accordance with this Section 7, then the Deposit shall be refunded to BUYER by the Escrow Holder, and SELLER and BUYER shall thereupon be released from all further obligations under this Agreement other than the Surviving Obligations.

## **13. RISK OF LOSS.**

If prior to the Closing, the Improvements, or any part thereof, are materially and substantially damaged or destroyed such that the total cost of restoring the Property to the condition that existed just prior to the damage or destruction is equal to or exceeds thirty percent (30%) of the Property's fair market value prior to the damage or destruction, BUYER has the right, exercisable by giving written notice to the SELLER within ten (10) days after receiving written notice of such damage or destruction (but in any event no later than the Closing Date, either (i) to terminate this Agreement, in which case the Deposit shall be returned to BUYER,

and any other money or documents in escrow shall be returned to the party depositing the same, and neither party shall have any further rights or obligations under this Agreement other than the Surviving Obligations, or (ii) to accept the Property in its then condition and to proceed with the Closing. A failure by BUYER to notify SELLER in writing within such ten (10) business day period or prior to the Closing Date, whichever is earlier, will be deemed an election to proceed under clause (ii) above. If BUYER elects (ii) in the prior sentence, all of SELLER's insurance proceeds, if any, shall be retained by SELLER

#### **14. DEFAULT AND REMEDIES.**

- A. DEFAULT BY BUYER; LIQUIDATED DAMAGES. IF THE SALE OF THE PROPERTY IS NOT CONSUMMATED BECAUSE OF BUYER'S DEFAULT UNDER THIS AGREEMENT, ESCROW HOLDER SHALL BE INSTRUCTED BY SELLER TO CANCEL THE ESCROW, SELLER AND BUYER SHALL THEREUPON BE RELEASED FROM EACH OF ITS RESPECTIVE OBLIGATIONS HEREUNDER (OTHER THAN THE SURVIVING OBLIGATIONS), AND AS LIQUIDATED DAMAGES HEREUNDER, THE DEPOSIT (DEFINED IN SECTION 2.B), TO THE EXTENT MADE, SHALL BE PAID TO AND RETAINED BY SELLER AS LIQUIDATED DAMAGES. THE PARTIES ACKNOWLEDGE THAT SELLER'S ACTUAL DAMAGES IN THE EVENT OF A DEFAULT BY BUYER WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. THEREFORE, BY PLACING THEIR SIGNATURES OR INITIALS BELOW, THE PARTIES ACKNOWLEDGE THAT THE AMOUNT DESIGNATED AS LIQUIDATED DAMAGES IN THIS SECTION 9.A. HAS BEEN AGREED UPON, AFTER NEGOTIATION, AS REASONABLE LIQUIDATED DAMAGES PURSUANT TO THE TERMS HEREOF, CALIFORNIA CIVIL CODE SECTIONS 1671 AND 1677 AND ANY RETENTION OF LIQUIDATED DAMAGES AS A RESULT THEREOF SHALL CONSTITUTE SELLER'S ONLY AND EXCLUSIVE REMEDY AGAINST BUYER IN THE EVENT OF A DEFAULT ON THE PART OF BUYER. THE PAYMENT OF SUCH AMOUNT AS LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTIONS 3275 OR 3369, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES. ADDITIONALLY, BUYER AGREES THAT IF PURSUANT TO THE GRANT DEED THE PROPERTY REVERTS BACK TO SELLER AS A RESULT OF BUYER'S FAILURE TO SECURE A CERTIFICATE OF OCCUPANCY WITHIN ONE YEAR OF THE DATE OF TRANSFER OF THE PROPERTY, THE BUYER SHALL PAY TO SELLER AS LIQUIDATED DAMAGES ONE HALF OF THE PURCHASE PRICE. THE PROVISIONS OF THIS SECTION 9.A. SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT. THIS AGREEMENT SHALL NOT MERGE WITH THE GRANT DEED UPON TRANSFER OF THE PROPERTY.

SELLER'S INITIALS: \_\_\_\_\_ BUYER'S INITIALS: \_\_\_\_\_

- B. Default or Breach by SELLER. If SELLER materially defaults in the performance of its obligations hereunder or is otherwise in material breach of the terms hereof, such that BUYER is materially and adversely impacted, BUYER shall, at its election, have the right to:
- (1) Seek specific performance of SELLER's obligation to convey the Property to BUYER pursuant to this Agreement, and SELLER agrees that because of the unique nature of the Property, specific performance is an appropriate

remedy for enforcement of SELLER's obligation to convey the Property to BUYER pursuant to the Agreement; provided, however, that in the event Buyer elects to sue Seller for specific performance of Seller's obligations under this Agreement; (i) Buyer must have reasonably demonstrated that it is prepared to deliver into Escrow all funds and documents required by this Agreement in order for the Closing to occur, and Buyer shall be ready and willing in all other respects to close Escrow in accordance with the terms and conditions of this Agreement; and (ii) Buyer must have filed a petition with the Superior Court of Kern County, seeking specific performance of Seller's obligations under this Agreement, within sixty (60) days after the scheduled Closing Date (as the same may be mutually extended by the parties).

- (2) Terminate this Agreement, upon which termination BUYER's remedy shall be the return of the Deposit and recovery of all out of pocket expenses incurred by BUYER in connection with this Agreement and BUYER's due diligence investigations relating to the Property and all other damages incurred by BUYER as the result of SELLER's default; and
- (3) Such other rights to BUYER by law or in equity. The provisions of this Section 9.B. shall survive the Close of Escrow or the termination of this Agreement.

C. Remedies.

- (1) SELLER'S Default. If SELLER defaults hereunder, or the Closing does not occur by reason of Seller's default hereunder which is not cured within ten (10) days after Seller's first have knowledge of such default, then Buyer shall be entitled to pursue its right to specifically enforce this Agreement or to terminate this Agreement. In the event Buyer terminates this Agreement, Seller, to the extent that any Deposit has been released, or Escrow Holder, to the extent any Deposit has not been released, shall immediately return said Deposit(s) to Buyer. Seller shall also pay for all out of pocket expenses incurred by Buyer in connection with this Agreement and Buyer's due diligence investigations relating to the Property and all other damages incurred by Buyer as a result of Seller's default. Except as otherwise provided, neither party will have any further obligations under this Agreement.
- (2) **BUYER'S Default. BUYER AND SELLER AGREE THAT IN THE EVENT THE CLOSING FAILS TO OCCUR BECAUSE OF BUYER'S DEFAULT OR BREACH (NOT DUE TO SELLER'S WRONGFUL ACTS OR OMISSIONS OR SELLERS' BREACH) HEREUNDER, THE DAMAGES TO SELLER WOULD BE EXTREMELY DIFFICULT AND IMPRACTICABLE TO ASCERTAIN, AND THAT THEREFORE THE DEPOSIT, TO THE EXTENT MADE AND RELEASED AND BECOME NON-REFUNDABLE, IS A REASONABLE ESTIMATE OF THE DAMAGES TO SELLERS, SUCH DAMAGES INCLUDING COSTS OF NEGOTIATING AND DRAFTING OF THIS AGREEMENT, COSTS OF COOPERATING IN SATISFYING CONDITIONS TO CLOSING, COSTS OF SEEKING ANOTHER BUYER UPON BUYER'S DEFAULT, OPPORTUNITY COSTS IN KEEPING THE PROPERTY OUT OF THE MARKETPLACE, AND OTHER COSTS INCURRED IN CONNECTION HEREWITH. ACCORDINGLY,**

BUYER AGREES THAT UPON BUYER'S RECEIPT OF NOTICE OF SUCH DEFAULT OR BREACH FROM SELLER, WHICH NOTICE SHALL SPECIFY THE BREACH IN DETAIL, AND FAILURE BY BUYER TO CURE SAID BREACH, DEFAULT OR FAILURE TO PERFORM WITHIN TEN (10) DAYS AFTER RECEIPT OF SUCH NOTICE, AND CLOSING FAILS TO OCCUR BECAUSE OF SUCH BREACH OR DEFAULT, SELLERS' DAMAGES SHALL BE LIMITED TO THE DEPOSIT, TO THE EXTENT SAID DEPOSIT HAS BEEN MADE, RELEASED AND HAVE BECOME NON-REFUNDABLE, AS LIQUIDATED DAMAGES, AS SELLER'S SOLE REMEDY IN THE EVENT OF ANY SUCH MATERIAL BREACH OR DEFAULT BY BUYER HEREUNDER. THE PARTIES ACKNOWLEDGE THAT SELLER'S RETENTION OF LIQUIDATED DAMAGES AS CONTEMPLATED IN THIS SECTION 9 IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTIONS 3275 OR 3369, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER UNDER CALIFORNIA CIVIL CODE SECTIONS 1671, 1676, AND 1677. THE FOREGOING IS NOT INTENDED TO LIMIT BUYER'S SURVIVING OBLIGATIONS UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION ANY OBLIGATIONS OF BUYER TO INDEMNIFY SELLERS OR WITH RESPECT TO ANY DEFAULT BY BUYER WHICH OCCURS FOLLOWING THE APPLICABLE CLOSING.

INITIALS OF BUYER: \_\_\_\_\_ INITIALS OF SELLERS: \_\_\_\_\_ / \_\_\_\_\_

- (3) Arbitration of Disputes. EXCEPT AS PROVIDED BELOW, IF A DISPUTE ARISES OUT OF OR RELATES TO THIS AGREEMENT, UPON THE WRITTEN DEMAND OF EITHER PARTY, THE DISPUTE SHALL BE RESOLVED BY BINDING ARBITRATION IN ACCORDANCE WITH THE AMERICAN ARBITRATION ASSOCIATION'S COMMERCIAL ARBITRATION RULES EXCEPT THAT THE ARBITRATION SHALL BE CONDUCTED BY ONE (1) ARBITRATOR WHO IS A RETIRED JUDGE OR AN ATTORNEY WITH NOT LESS THAN FIFTEEN (15) YEARS' EXPERIENCE IN REAL ESTATE MATTERS. DISCOVERY SHALL BE ALLOWED AS PROVIDED IN CODE OF CIVIL PROCEDURE SECTION 1283.05, THE PROVISIONS OF WHICH ARE INCORPORATED BY REFERENCE. THE ARBITRATOR MAY ORDER SPECIFIC PERFORMANCE WHEN THAT REMEDY IS PROVIDED FOR IN THIS AGREEMENT. THE JUDGMENT UPON THE ARBITRATION AWARD SHALL BE FINAL AND BINDING UPON THE PARTIES AND MAY BE ENTERED IN ANY COURT HAVING JURISDICTION THEREOF. IF THE PARTIES DO NOT AGREE UPON AN ARBITRATOR WITHIN FIFTEEN (15) DAYS AFTER DELIVERY OF A WRITTEN DEMAND FOR ARBITRATION, THEN THE ARBITRATOR SHALL BE CHOSEN BY THE AMERICAN ARBITRATION ASSOCIATION. THE ARBITRATOR SHALL ALLOCATE THE FEES AND COSTS OF ARBITRATION BETWEEN THE PARTIES AND SHALL AWARD COSTS, INCLUDING REASONABLE ATTORNEY'S FEES, TO



EITHER PARTY. NOTHING CONTAINED IN THIS SECTION SHALL RESTRICT EACH PARTY FOR SEEKING EQUITABLE RELIEF FROM THE COURT SYSTEM PENDING RESOLUTION OF THE ARBITRATION.

NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY. WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION TO NEUTRAL ARBITRATION.

SELLER'S INITIALS: \_\_\_\_\_ BUYER'S INITIALS: \_\_\_\_\_

- D. Jury Waiver. BUYER and SELLER each waives the right to a jury in any litigation in connection with this Agreement, or the property, or the transactions contemplated by this Agreement. BUYER and SELLER each acknowledges that this waiver has been freely given after consultation by it with competent counsel. This section 9.D has been included only for the event that, despite the parties' intention, the agreement to utilize judicial reference or arbitration as provided above is held to be inapplicable, and nothing in this section 9.D is intended to qualify the parties' agreement to resolve all disputes via order of reference.

## 15. NOTICE.

All notices required or permitted hereunder shall be in writing and shall be served on the parties at the following address:

If to BUYER:

Meister & Meister Inc.  
8100 California City Blvd  
California City CA 93505

With a copy to:

If to SELLER:

City of California City  
William T. Weil Jr  
City Manager  
21000 Hacienda Blvd.  
California City, CA 93505

With a copy to:

Jones & Mayer  
Christian Bettenhausen  
City Attorney  
3777N. Harbor Blvd.  
Fullerton, CA 92835

Any notices required under this Agreement shall be in writing and shall be deemed to have been duly given (i) on the date of service, if served personally on the person to whom notice is to be given, (ii) on the date of service if sent by telecopier with confirmation of successful transmission, provided the original is concurrently sent by first class mail, and provided that notices received by telecopier after 5:00 p.m. shall be deemed given on the next business day, (iii) on the next business day after deposit with a recognized overnight delivery service, or (iv) on the third day after mailing, if mailed to the party to whom notice is to be given by first class mail, registered or certified, and postage-prepaid.

**16. TIME OF ESSENCE.**

Time is of the essence of this Agreement.

**17. GOVERNING LAW AND VENUE.**

This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to any choice of law principles. Venues for all court proceedings or alternative forms of dispute resolution proceedings shall be Kern County.

**18. COUNTERPARTS.**

This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**19. CAPTIONS.**

The captions/headings in this Agreement are inserted for convenience of reference and in no way define, describe, or limit the scope or intent of this Agreement or any of the provisions hereof.

**20. ASSIGNABILITY.**

Buyer may not assign its rights, remedies and obligations under this Agreement, in whole or in part, without Seller's prior written consent, which may be withheld in Seller's sole discretion, except to an affiliate of Buyer. For purposes of this paragraph, an "affiliate" of Buyer is any corporation, partnership, joint venture, individual, business trust, real estate investment trust, or any other legal entity who directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with Buyer.

**21. BINDING EFFECT.**

This Agreement shall be binding upon and inure to the benefit of both parties hereto and their respective successors and permitted assigns.

**22. MODIFICATIONS; WAIVER.**

No waiver, modification, amendment, discharge or change of this Agreement shall be valid unless the same is in writing and signed by both parties.

**23. ENTIRE AGREEMENT.**

This Agreement contains the entire agreement between the parties relating to the transactions contemplated hereby and all prior or contemporaneous agreements, understandings, representations or statements, oral or written, are superseded hereby.

**24. AMBIGUITIES.**

This Agreement shall be interpreted as if it had been jointly drafted by both parties. Therefore, the normal rule of construction that ambiguities are construed against the drafter is waived.

**25. SEVERABILITY.**

Any provision of this Agreement which is void, unenforceable or invalid or the inclusion of which would adversely affect the validity, legality or enforcement of this Agreement shall be of no effect, but all the remaining provisions of this Agreement shall remain in full force and effect.

**26. SUBMISSION OF AGREEMENT.**

The submission of this Agreement by one party to the other or their agents or attorneys for review will not be deemed an offer to sell or purchase the Property, and no agreement with respect to the purchase and sale of the Property will exist unless and until this Agreement is executed and delivered by both SELLER and BUYER.

**27. REAL ESTATE REPORTING PERSON.**

Escrow Holder is designated the "real estate reporting person" for purposes of Section 6045 of Title 16 of the United States Code and Treasury Regulation 1.6045-4 and any instructions or settlement statement prepared by Escrow Holder shall so provide. Upon the consummation of the transaction contemplated by this Agreement, Escrow Holder shall, after review and approval by SELLER (such approval not to be unreasonably withheld, conditioned or delayed), file a Form 1099 information return and send the statement to SELLER as required under the aforementioned statute and regulation.

**28. COMPUTATION OF TIME.**

In computing any period of time pursuant to this Agreement, the day of the act or event from which the designated period of time begins to run will not be included, and the last day of the period so computed will be included, unless it is a Saturday, Sunday, or legal holiday recognized as such in California, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or such legal holiday. As used in the Agreement, "business day" shall mean a day which is not a Saturday, Sunday, or legal holiday recognized as such in California.

**29. WAIVER.**

No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, not shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

**30. NUMBER AND GENDER.**

When required by the context of this Agreement, each number (singular and plural) shall include all numbers, and each gender shall include all genders.

**31. NEGOTIATED TERMS.**

Each party has had the opportunity to be advised by legal counsel and other professionals in connection with this Agreement, and each party has obtained such advice as each party deems appropriate. The parties agree that the terms and conditions of this Agreement are the result of negotiations between the parties and that this Agreement shall not be construed in favor of or against any party by reason of the extent to which any party or its professionals participated in the preparation of this Agreement.

**32. SIGNATURES.**

Signatures and initials to this Agreement created by the signer by electronic means and/or transmitted by telecopy or other electronic transmission shall be valid and effective to bind the party so signing. Each party agrees to promptly deliver an executed original of this Agreement with its actual signature and initials to the other party, but a failure to do so shall not affect the enforceability of this Agreement, it being expressly agreed that each party to this Agreement shall be bound by its own electronically created and/or electronically transmitted signature and initials and shall accept the electronically created and/or electronically transmitted signature and initials of the other party to this Agreement.

**33. NO MERGER**

BUYER and SELLER agree that this Agreement shall not merge with the Grant Deed upon transfer of the Property and the rights, duties, obligations, representation, and guarantees contained in this Agreement shall survive after the conveyance of the Property to BUYER.

**34. EXCLUSIVITY.**

During the terms of this Agreement, SELLER shall not offer the Property or any interest therein for sale or lease to any other party, or negotiate, solicit, or entertain any offers.

*[Signatures to follow]*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as follows:

SELLER:

Successor Agency of the Former  
Redevelopment Agency of the City of  
California City

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

Name: \_\_\_\_\_  
City Clerk

BUYER:

Meister & Meister Inc.

Name: \_\_\_\_\_  
M. Joshua Meister

Title: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

Name: \_\_\_\_\_  
City Clerk





## EXHIBIT INDEX

### Exhibit Reference

### Content

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Legal Description of Real Property

Exhibit B

Grant Deed

Exhibit C

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Exhibit D

Tract Map 5988, Assessor Map No. 302-51

Exhibit E

Appraisal Receipt



# Exhibit A

## **LEGAL DESCRIPTION APN 302-510-05**

Lot 5 of Tract 5988 in the City of California City, County of Kern, State of California as per Document No. 202012520 Recorded January 25, 2002 in Book 48, Page 8 of Maps in the Office of The County Recorder of said County.

The above described parcel contains 3.96 Acres more or less.

## **LEGAL DESCRIPTION APN 302-510-06**

Lot 6 of Tract 5988 in the City of California City, County of Kern, State of California as per Document No. 202012520 Recorded January 25, 2002 in Book 48, Page 8 of Maps in the Office of The County Recorder of said County.

The above described parcel contains 1.74 Acres more or less.

## **LEGAL DESCRIPTION APN 302-510-07**

Lot 7 of Tract 5988 in the City of California City, County of Kern, State of California as per Document No. 202012520 Recorded January 25, 2002 in Book 48, Page 8 of Maps in the Office of The County Recorder of said County.

The above described parcel contains 1.22 Acres more or less.

## **LEGAL DESCRIPTION APN 302-510-08**

Lot 8 of Tract 5988 in the City of California City, County of Kern, State of California as per Document No. 202012520 Recorded January 25, 2002 in Book 48, Page 8 of Maps in the Office of The County Recorder of said County.

The above described parcel contains 2.06 Acres more or less.

## **LEGAL DESCRIPTION APN 302-510-09**

Lot 9 of Tract 5988 in the City of California City, County of Kern, State of California as per Document No. 202012520 Recorded January 25, 2002 in Book 48, Page 8 of Maps in the Office of The County Recorder of said County.

The above described parcel contains 2.04 Acres more or less.

**LEGAL DESCRIPTION APN 302-510-10**

Lot 10 of Tract 5988 in the City of California City, County of Kern, State of California as per Document No. 202012520 Recorded January 25, 2002 in Book 48, Page 8 of Maps in the Office of The County Recorder of said County.

The above described parcel contains 2.05 Acres more or less.

**LEGAL DESCRIPTION APN 302-510-11**

Lot 11 of Tract 5988 in the City of California City, County of Kern, State of California as per Document No. 202012520 Recorded January 25, 2002 in Book 48, Page 8 of Maps in the Office of The County Recorder of said County.

The above described parcel contains 8.32 Acres more or less.

Exhibit B

**GRANT DEED**

**RECORDING REQUESTED BY AND WHEN  
RECORDED MAIL TO:**

California City  
21000 Hacienda Blvd  
California City, CA 93505  
Attn: City Clerk

APN: \_\_\_\_\_

Space Above This Line Reserved for Recorder's Use

**GRANT DEED**

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the Successor Agency of the Former Redevelopment Agency of the City of California City, a public body politic, ("Grantor") hereby GRANTS to Meister & Meister, Inc., a California Corporation ("Grantee"), the certain real property located in the City of California City, Count of Kern,, State of California, described in the legal description attached hereto as Exhibit "A," and incorporated herein by this reference.

The Grant of Property, hereunder, is subject to the following condition: Grantee shall develop the Property as industrial complex consisting of six 28,000 square foot light deprivation greenhouse structures one 10,000 square feet metal structure with fencing, security systems, and parking. ("Project") pursuant to the terms of the Purchase and Sale Agreement, between the Grantor and Grantee, dated \_\_\_\_\_ ("P&S Agreement") and pursuant to any terms and conditions of Project approval set forth by the City of California City; and if Grantee fails to secure a Certificate of Occupancy within one year of the date of this Grant Deed, then fee title to the Property shall revert back to the Grantor; and, in the event of reversion, Grantor shall refund to Grantee the a sum equal to one half of the Purchase Price without interest as set forth in the P&S Agreement.

If legal proceedings are initiated to enforce the rights, duties or obligations of any of the covenants set forth in this Grant Deed, then the prevailing party in such proceeding shall be entitled to collect its reasonable attorney fees and costs from the other party in addition to any other damages or relief obtained in such proceedings.

Dated: \_\_\_\_\_

Successor Agency to the California City  
Redevelopment Agency

By: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF KERN )

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public,  
personally appeared \_\_\_\_\_,  
personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s)  
whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they  
executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the  
instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the forgoing paragraph is true and correct.

Witness my hand and official seal.

## Notary Public

[SEAL]

Exhibit C

# Meister & Meister Inc.

8100 California City Blvd. California City, Ca 93505

Office (760) 373-8282 Fax (760) 373-8111

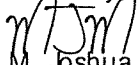
November 10<sup>th</sup> 2016

Tom Weil  
City of California City  
21000 Hacienda Blvd  
California City, Ca 93505

Dear Mr. Weil,

The purchase of APN 30251010, 30251009, 30251008, 30251007, 30251006, 30251005 currently owned by the successor's agency will be developed to fulfill the needs of medical marijuana cultivators in the city of California City. Cultivators are looking for buildings that are constructed and move in ready. These lots will be developed with a 28,000 square foot light deprivation greenhouse structures. Structures will include fencing, security systems and parking. Please see attached site plan for the building locations, pictures and drawings of the buildings that we would be proposing. Please allow for a parcel split apn 30251005 and a smaller processing "steel building" 10,000 square feet on apn 30251007.

Sincerely



M. Joshua Meister

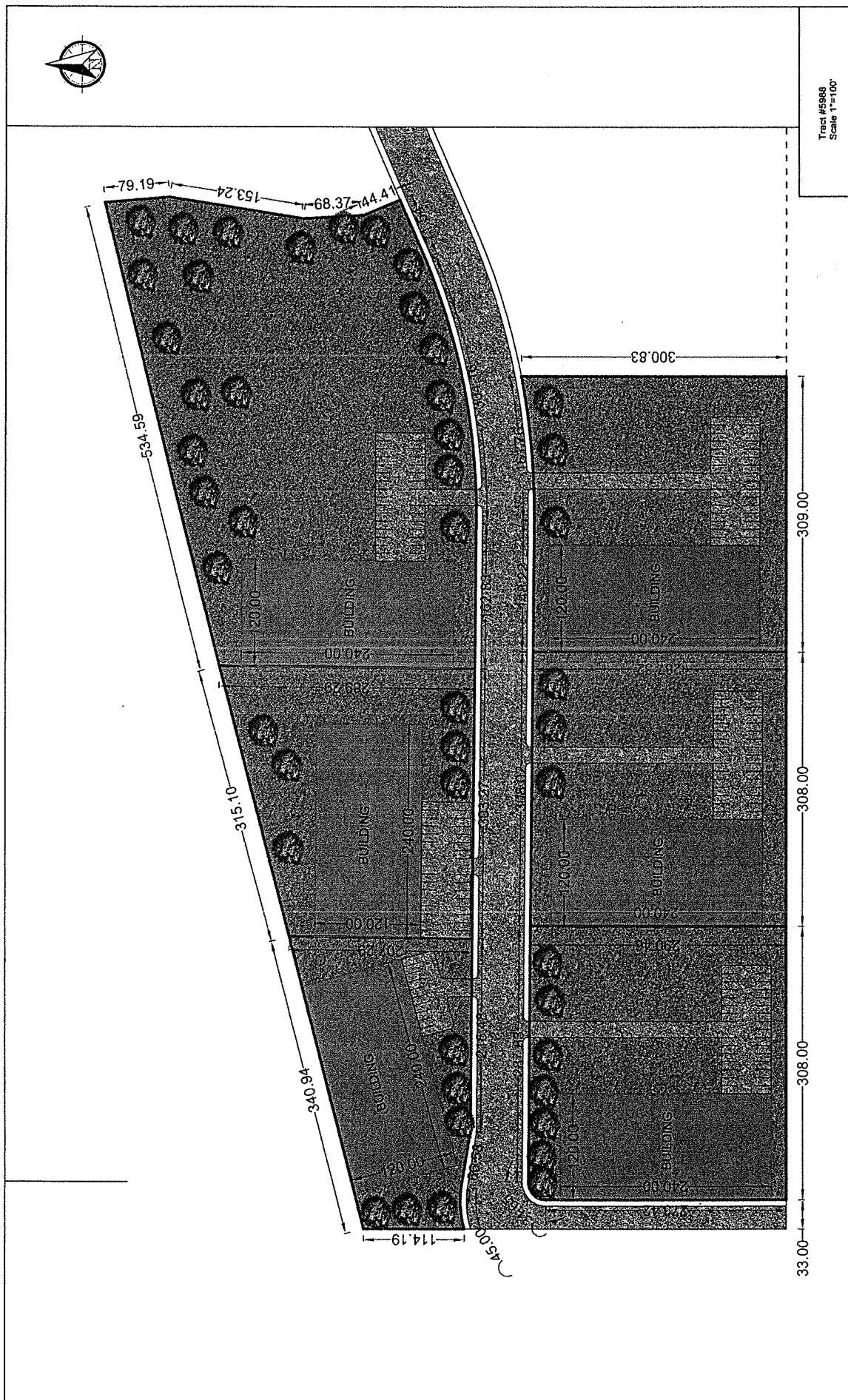
President

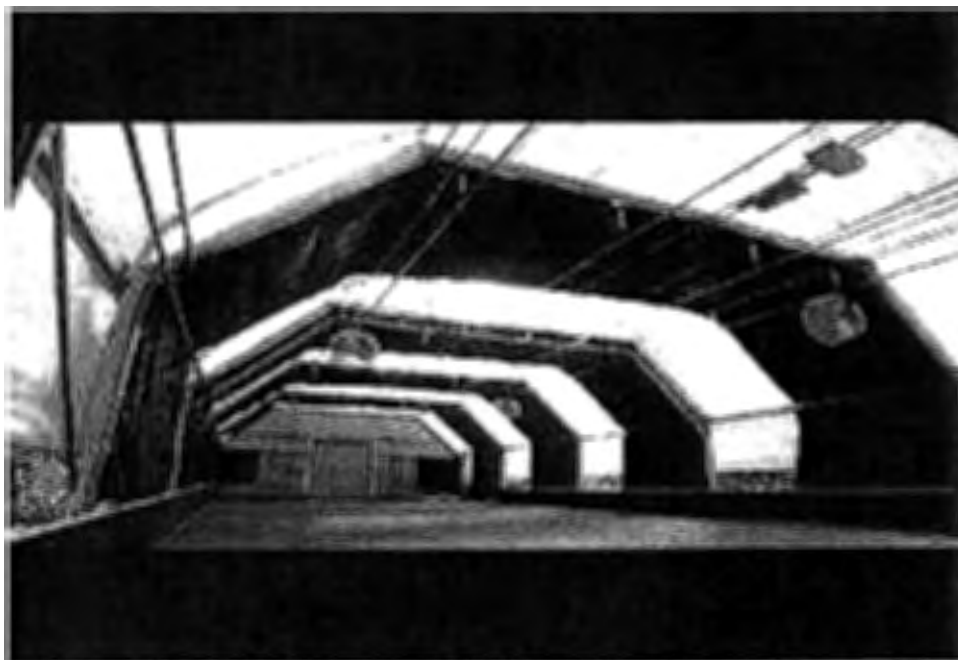
Meister & Meister Inc.

8100 California City Blvd

California City CA 93505

Cell 760-912-2714





②

$L = Z \Delta$

CURTIS PI

BK.  
216

Water/sewer  
Insured for  
Electrical.

302-510-01 - 10  
TRACT LOT 1 - 10  
TRACT MAP 5988, TRUCK BLOCK,  
CLAIMER

<b>LEGEND</b>	<b>SUBD. KEY</b>	<b>DISCLAIMER</b>
<b>DRAWN</b> JUL 22 2002	OFF. SALES A. IN 1926	THIS MAP IS FOR UNOFFICIAL PURPOSES ONLY. IT IS NOT TO BE CONSIDERED AS PORTY OR EVIDENCE OF ANY RIGHTS OR INTERESTS IN LAND OR FOR PURPOSES OF RATING OR SUBDIVISION LAW
<b>JURISDICTION</b> CITY OF GALT CITY	(NOT DESIGNATIONS IN PATENT(S))	

# Exhibit D

XFER TO CITY 3/7/11 302-51



Exhibit E



**Valbridge**  
PROPERTY ADVISORS

Valbridge Property Advisors |  
Michael Burger & Associates

4915 Calloway Dr., Ste. 101  
Bakersfield, CA 93312  
(661) 587-1010

## Invoice: 691-16

---

10-05-2016

**Bill To:**

City of California City  
Mr. William T. Well  
2100 Hacienda Blvd.  
California City, CA 93505

Description	Amount
For: Real Estate Appraisal Services Rendered  Industrial Land No Situs, Lindbergh Blvd. California City, CA 93505	\$3,500.00
TOTAL	\$3,500.00

**TERMS:**

**Make all checks payable to Michael Burger & Associates**

**Federal Tax ID Reference: 77-0513192**

**If you have any questions regarding this invoice, please contact:**

Billing Department  
egurney@valbridge.com  
661-587-1010

**Thank you for your business.**

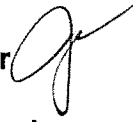


# CITY COUNCIL

November 22, 2016

TO: Mayor and City Council

FROM: Jeanie O'Laughlin, Finance Director



SUBJECT: Approval of payment to Cal OES for closeout of FEMA Disaster DR-1952.

## **BACKGROUND:**

In December, 2010, California City experienced damage from a winter storm. The City sustained damage to California City Blvd, including the railroad trestle area. After submission of all of our estimated costs, FEMA reimbursed us their share and Cal OES monitored the project. In April of this year, Cal OES prepared an Application Closeout and determined that \$10,244.76 of the total amount is de-obligated. Cal OES paid us more than our reimbursable expenses.

## **RECOMMENDATION:**

Staff recommends that the Council approve payment of this invoice to Cal OES. If this invoice is not paid, we will not be eligible for future emergency funds.

## **FISCAL IMPACT:**

Since these funds were paid to us in a prior fiscal year, we will need to pay this invoice from reserves. Based on the G/L allocation of the deposits, the allocation should be 83% from the General Fund, Fund 10, and 17% from Street Fund, Fund 27. Transfer funds from Retained Earnings. See budget request form attached.

## **ENVIRONMENTAL ACTION:**

None.

## **ATTACHMENTS:**

Budget request form  
Invoice and related documents from Cal OES

NB1

**City of California City**  
**Budget Transfer Request Form**

Department Requesting Transfer: Finance  
Department Head: Jeanie O'Laughlin Contact Phone: 760-373-7167  
Fund Number: 10  
1. Transfer Funds out of account #: 10-03110 Title: Retained Earnings  
Current Balance: \$5,065,194 Date Balance was Checked: 11-17-16  
Transfer Funds into account #: 10-4155-620 Title: General Govt - Storm  
Current Balance: 0 Date Balance was Checked: 11-17-16  
Amount requested to be Transferred: \$8,471.00  
Projected New Fund Balance and Budgeted Amount if approved: \$5,056,723 \$8,471  
Justification: Pay Cal OES outstanding invoice

Department Requesting Transfer: Street Fund  
Department Head: Craig Platt Contact Phone: 760-373-7297  
Fund Number: 27  
2. Transfer Funds out of account #: 27-03110 Title: Retained Earnings  
Current Balance: \$131,487- Date Balance was Checked: 11-17-16  
Transfer Funds into account #: 27-441-735 Title: Street: Drainage FEMA  
Current Balance: 0 Date Balance was Checked: 11-17-16  
Amount requested to be Transferred: \$1,774  
Projected New Fund Balance and Budgeted Amount if approved: \$129,713 \$1,774  
Justification: \_\_\_\_\_

Authorized Signatures for Account funds to be Transferred

Department Head Requesting the Transfer: Jeanie O'Laughlin Jeanie O'Laughlin Date: 11-17-16  
Print Name Signature  
City Manager: \_\_\_\_\_ Date: \_\_\_\_\_  
Print Name Signature

\*\*\*\*\*

For Finance Department Use Only

Are the funds available for transfer: YES ☒ No \_\_\_\_\_ (one or the other must be checked)

Processed by: \_\_\_\_\_ Date: \_\_\_\_\_  
Print Name Signature

Approved by: Jeanie O'Laughlin Jeanie O'Laughlin Date: 11-17-16  
Print Name Signature



June 14, 2016

William T. Weil, Jr.  
City Manager  
California City, City of  
21000 Hacienda Boulevard  
California City, CA 93505

Subject: Debt Recovery for CDAA **DR-1952**, Cal OES # **029-09780**

Dear Mr. Weil:

The California Governor's Office of Emergency Services (Cal OES) has reviewed your state account for this disaster. As a result of **de-obligation** for the project application, funds in the amount of **\$10,248.00** are due. However, an amount of **\$3.24** due to you in your federal account will be used to reduce the amount owed to **\$10,244.76**.

Attached is a copy of State Supplement #7 previously sent to your agency describing the actions that resulted in the negative balance.

Payments due for any other open disasters will not be processed until the debt is cleared. **Failure to clear this debt may result in categorizing your agency as high risk, which could prevent future grants from being awarded.**

Our Accounting Office will be sending you an official invoice based on the history report enclosed for your review.

For assistance regarding this matter please contact the Grants Processing Unit at (916) 845-8110.

Sincerely,

Robin Shepard, Chief  
Grants Processing Unit

Enclosure

cc: File T#16-013  
Copy of State Supplement #7





STATE OF CALIFORNIA  
GOVERNOR'S OFFICE OF EMERGENCY SERVICES  
3650 SCHRIEVER AVE  
MATHER, CA 95655-4203



**Cal OES**  
GOVERNOR'S OFFICE  
OF EMERGENCY SERVICES

**TO:** City of California City  
**Attn:** William T. Weil, Jr., City Manager  
21000 Hacienda Boulevard  
California City, CA 93505

**INVOICE NO:** 15-05221  
**INVOICE DATE:** June 16, 2016  
**PO/Contract#:** TM#16-013/DR1952-83

QUANTITY	DESCRIPTION	UNIT PRICE	TOTAL PRICE
	<p>California Disaster Assistance Act DR1952 – December 2010 Statewide Storms Cal OES ID# 029-09780</p> <p>Reimbursement is requested for de-obligation related to Supplement #7 resulting in total project overpayment for the disaster.</p> <p><b>Payment is due upon receipt of this invoice.</b></p> <p>For any questions regarding this invoice, please contact Judy Worman at (916) 845-8181 or email <a href="mailto:judy.worman@caloes.ca.gov">judy.worman@caloes.ca.gov</a>.</p> <p>For any questions regarding payment, please contact Marites Ehlers (916) 845-8348 or email <a href="mailto:marites.ehlers@caloes.ca.gov">marites.ehlers@caloes.ca.gov</a>.</p> <p>Thank You,</p> <p><i>Kris Plaza</i> Kris Plaza Manager, Local Assistance</p>		
		<b>TOTAL DUE</b>	<b>\$10,244.76</b>

**Make Check Payable to:**

**Governor's Office of Emergency Services**

**Mail to:** Governor's Office of Emergency Services  
ATTENTION: Accounting Branch  
3650 Schriever Avenue  
Mather, CA 95655-4203

ACCOUNTING USE ONLY							
Current Doc 15-05221				Cash Receipt:			
Fund: 0001	FY: 2014/15	FM: 12		Date:		Amount:	
Batch Date:	Batch No.:	TC: 130		Batch Date:	Batch No.:	TC: 155	
Index: 8311	Object: 702	PCA: 23829	Source: 580200	Project No.:		Subsidiary: 15900000	

CITY OF CALIFORNIA CITY

CALIFORNIA CITY BLVD. SHOULDER AND TRESCAPE DIRT RD. REPAIR PROJECT  
FEMA PROJECT NO. 1952-DR-CA-CC03

FINAL PROJECT EXPENSES REPORT

Work Completed: February 8, 2012

HAZARD MITIGATION

ITEM NO.	ITEM CODE	UNIT OF MEASURE	QNTY TO DATE	PRICE PER UNIT	% COMPLETED	TOTAL PRICE
1	RAILROAD TRESTLE AREA, GRADING AND INCIDENTAL EARTHWORK	LS	1	\$ 13,300.00	100%	\$ 13,300.00
2	CONCRETE VALLEY GUTTER W/CUT-OFF WALL	CY	93.50	\$ 343.00	100%	\$ 32,070.50
3	CONCRETE-ROCK SLOPE PROTECTION, CLASS COBBLE W/CLASS 3 CONCRETE	TON	216.41	\$ 87.00	100%	\$ 18,827.67
4	INSTALL 3/4 GRAVEL	SF	325	\$ 4.20	100%	\$ 1,365.00

Subtotal... \$ 65,563.17

TRESCAPE DIRT ROAD REPAIR

ITEM NO.	ITEM CODE	UNIT OF MEASURE	EST QNTY	PRICE PER UNIT	% COMPLETED	TOTAL PRICE
5	RESTORE ERODED MATERIAL	LS	1	\$ 40,900.00	100%	\$ 40,900.00
6	COMPACT, GRADE, SHAPE & INCIDENTAL EARTHWORK	LS	1	\$ 7,000.00	100%	\$ 7,000.00

Subtotal... \$ 47,900.00

CALIFORNIA CITY BLVD. SHOULDER REPAIR

ITEM NO.	ITEM CODE	UNIT OF MEASURE	EST QNTY	PRICE PER UNIT	% COMPLETED	TOTAL PRICE
7	REMOVE SEDIMENTS	LS	1	\$ 27,600.00	100%	\$ 27,600.00
8	RESTORE ERODED MATERIAL	LS	1	\$ 86,500.00	100%	\$ 86,500.00
9	COMPACT, GRADE, SHAPE & INCIDENTAL EARTHWORK	LS	1	\$ 47,400.00	100%	\$ 47,400.00

Subtotal... \$ 161,500.00

ITEM NO.	ITEM CODE	UNIT OF MEASURE	EST QNTY	PRICE PER UNIT	% COMPLETED	TOTAL PRICE
10	PRECONSTRUCTION SURVEY FOR DESERT TORTOISE	LS	1	\$ 6,250.00	100%	\$ 6,250.00
11	WATER POLLUTION CONTROL PROGRAM	LS	1	\$ 3,900.00	100%	\$ 3,900.00

Subtotal... \$ 10,150.00

Construction Items Sub-Total: \$ 285,113.17  
Change Order #1 (Desert Tortoise Extra monitoring) \$ 3,454.12  
Change Order #2 (Gas Co. additional potholing) \$ 4,353.50

CONSTRUCTION ITEMS TOTAL: \$ 292,920.79

Administration and Legal \$ 5,961.00

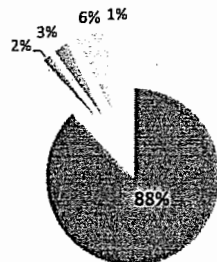
Preliminary Engineering \$ 10,531.00

Construction Engineering \$ 20,429.00

Soils Engineering \$ 3,545.00

**TOTAL PROJECT COST \$ 333,386.79**

FEMA PROJECT FINAL EXPENSES



■ CONSTRUCTION ITEMS  
TOTAL:  
■ Administration and Legal  
■ Preliminary Engineering  
■ Construction Engineering  
■ Soils Engineering

## Application Closeout CDAA Cost Share

<b>Subgrantee:</b> California City, City of		<b>Federal No.:</b> 1952
<b>PA ID:</b> 029-09780-00	<b>Cal OES ID:</b> 029-09780	<b>CDAA No.</b> 2010-17
<b>Prepared by:</b> Don Cardenas		<b>Date:</b> 4/19/2016

This is to verify the following:

**Scope of Work**

- ☒ There is No change from the initial scope of work and the actual scope of work.  
☐ There is a change from the initial scope of work and actual scope of work: see attached.

**Project Cost**

- ☒ There is No change from the initial approved amount and the actual final amount.  
☐ There is a change from the initial approved amount and the actual final amount: see attached.

**Other Federal Funding**

- ☒ There are No cost sharing DSRs with any other Federal agencies.  
☐ There are cost sharing DSRs with other Federal agencies: see attached.

**State Only DSRs**

- ☒ There are No State only DSRs  
☐ There are State only DSRs: see attached.

RECEIVED

616304  
APR 28 2016

GRANTS PROCESSING SECTION

**Summary:** Per FEMA Application Closeout letter dated September 9, 2014, FEMA log: 309061, CalEMA log: 592198, total approved funding for this application is \$460,417.63, and this application is considered closed. This application contains 01 large projects and 07 small projects.  
This cost share application closeout is 75% in accordance with CDAA 8686(a).  
Adjust funding for CDAA DSR's cost sharing with small projects based on documented actual eligible project costs for small projects in accordance with CDAA Disaster Assistance Division Policy dated February 2, 2001 under the authority of CDAA 8686.2.  
FEMA did not make any adjustments to their funding as the projects were completed. This results in a larger percentage of cost sharing by FEMA than 75% for small projects reducing the state CDAA non-federal cost share to \$74,873.00 from \$86,328.00 resulting in a net adjustment of CDAA funding by (\$11,455.00). See the draft adjusting DSR and the Net Small Project Underrun Calculator on the Form 91 for clarification.  
It has been determined that in accordance with FEMA Policy DAP 9525.2 VII (D) (2), the cost share under DSR 8 concerning FEMA "Donated Resources CREDIT "PW 945" Should be deobligated resulting in an adjusted amount of (300.02). This will allow the City to utilize the Federal obligated funding to reduce their local cost share for the application.  
Note: Verification has been made that no obligations are pending, for this applicant, for the state-only disaster CDAA 2010-17.  
**CDAA recommended approved funding is to be reduced to the amount of \$74,873.00.**

CDAA Final QC *Jared Kerman*

FOR INTERNAL USE ONLY

RECOMMENDED FINAL COST	\$74,873 —
75% STATE SHARE	
ADJUSTMENT	
10% ADMINISTRATIVE ALLOWANCE	
RECOMMENDED FINAL PAYMENT	





Final Inspection Report  
CDAA Cost Share  
Application Closeout



FEMA Disaster: **DR-1952**

CDAA Disaster: 2010-17

FEMA ID: 029-09780-00

CDAA ID: 029-09780

County: Kern

Subgrantee: California City, City of

DSR #	DSR Adj	PW #	Ver	Cat	Approved Amount		Claimed Costs	Eligible FIR Costs			Comments
					FEMA 100%	CDAA Funding		FEMA 100%	CDAA Eligible Costs	CDAA Funding	
1	1	4	0	B	\$30,692.45	\$5,755.00	\$30,692.45	\$30,692.45	\$30,692.45	\$5,755.00	
2	2	21	0	D	\$1,413.91	\$265.00	\$2,520.00	\$1,413.91	\$2,520.00	\$1,095.00	
3	3	31	0	C	\$18,106.52	\$3,395.00	\$15,804.51	\$18,106.52	\$15,804.51	\$1,668.00	
4	4	92	0	A	\$4,964.02	\$931.00	\$2,400.00	\$4,964.02	\$2,400.00	(\$992.00)	
5	5	134	0	B	\$27,500.26	\$5,156.00	\$27,500.26	\$27,500.26	\$27,500.26	\$5,156.00	
6	6	447	0	A	\$29,823.11	\$5,592.00	\$29,823.11	\$29,823.11	\$19,171.92	(\$2,397.00)	
7	7	556	0	C	\$12,916.79	\$2,422.00	\$12,916.79	\$12,916.79	\$13,669.50	\$2,986.00	
8	8	945	0	B	\$1,613.78	\$302.00	\$1,613.78	\$1,613.78	\$0.00	(\$908.00)	Doubted Resources PW
9	9	222	0	C	\$321,547.66	\$60,290.00	\$333,386.79	\$321,547.66	\$321,547.66	\$60,290.00	LARGE Project
10	9	222	1	C	\$11,839.13	\$2,220.00	\$0.00	\$11,839.13	\$11,839.13	\$2,220.00	LARGE Project



# Final Inspection Report CDAA Cost Share Application Closeout



FEMA Disaster: DR-1952

CDAA Disaster: 2010-17

FEMA ID: 029-09780-00

CDAA ID: 029-09780

County: Kern

Subgrantee: California City, City of

DSR #	DSR Adj	PW #	Ver	Cat	Approved Amount		Claimed Costs	Eligible FIR Costs			Comments
					FEMA 100%	CDAA Funding		FEMA 100%	CDAA Eligible Costs	CDAA Funding	
GRAND TOTAL					\$460,417.63	\$86,328.00	\$456,657.69	\$460,417.63	\$445,145.43	\$74,873.00	
NET ADJUSTMENT								Underrun	(\$11,455.00)		

Net Small Project Underrun Calculator						
Small Project Approved Amounts	FEMA Eligible Amount	Federal Cost Share	Non-Federal Share	CDAA Obligated Amount	Total Funding	Local Cost Share
	\$127,030.84	\$95,273.13	\$31,757.71	\$23,818.00	\$119,091.13	\$7,939.71
Small Project Eligible Amounts	CDAA Eligible Amount	Federal Cost Share	Non-Federal Share	CDAA Eligible Amount	Total Funding	Local Cost Share
	\$111,758.64	\$95,273.13	\$16,485.51	\$12,364.00	\$107,637.13	\$4,121.51
CDAA Funding Adjustment				(\$11,454.00)	Write DSR to Deobligate	

Name of Applicant Service Representative <b>Don Cardenas</b>	Title <b>DAPS II</b>	Signature 	Date <b>4/19/2016</b>
Name of Applicant Representative <b>William Weil</b>	Title <b>City Manager</b>	Signature 	Date
Name of reviewer <b>Saeed Kermani</b>	Title <b>Manager</b>	Signature 	Date <b>4/19/16</b>
Approved By <b>David Gillings</b>	Title <b>PAO</b>	Signature 	Date <b>4/23/16</b>

11/16/16

**APPLICANT HISTORY REPORT - CDAA LEDGER**

Page: 1

Decl Num: 1952

Fips Num: 029-09780

CDAA#: 029-09780

Applicant Name: California City, City of

Entry Date	Supp #	Full Obl Amt	Payment Amt	Entry Type	CS #	CS Date
04/26/11	0	6,623	603	STATE SUPPLEMENT	1163	05/19/11
05/10/11	0		5,417	PROJECT PAYMENT	1163	05/19/11
05/13/11	1	10,431	949	STATE SUPPLEMENT	1171	05/23/11
05/13/11	1		8,533	PROJECT PAYMENT	1171	05/23/11
07/20/11	2	6,151	559	STATE SUPPLEMENT	10089	08/03/11
07/20/11	2		5,033	PROJECT PAYMENT	10089	08/03/11
07/22/11	3	2,664	242	STATE SUPPLEMENT	10074	08/01/11
07/22/11	3		2,180	PROJECT PAYMENT	10074	08/01/11
08/23/11	4	332	30	STATE SUPPLEMENT	10282	09/09/11
08/23/11	4		302	PROJECT PAYMENT	10282	09/09/11
09/07/11	5	66,319	6,029	STATE SUPPLEMENT	10312	09/14/11
05/04/12			54,261	PROJECT PAYMENT	11007	05/15/12
09/25/14	6	2,442	222	STATE SUPPLEMENT	40222	10/01/14
09/25/14	6		8,249	PROJECT PAYMENT	40222	10/01/14
05/03/16	7	-12,601	0	STATE SUPPLEMENT		
06/29/16			-3	REMITTED CHECK	99999	06/29/16
Total:		82,361	92,606			

Balance: -10,245

Retention: 2,352

Available Balance: -12,597

11/16/16

**APPLICANT HISTORY REPORT - FEDERAL PA LEDGER**

Page: 1

Decl Num: 1952 Fips Num: 029-09780 Applicant Name: California City, City of

Entry Date	Supp #	131 ID	Full Obl Amt	Payment Amt	Entry Type	CS #	CS Date
04/26/11	5		24,079	0	OBLIGATION		
05/10/11	5			24,079	PROJECT PAYMENT	1160	05/19/11
05/13/11	8		37,928	0	OBLIGATION		
05/13/11	8			37,928	PROJECT PAYMENT	1174	05/23/11
07/20/11	32		22,367	0	OBLIGATION		
07/20/11	32			22,367	PROJECT PAYMENT	10095	08/03/11
07/22/11	34		9,687	0	OBLIGATION		
07/22/11	34			9,687	PROJECT PAYMENT	10078	08/01/11
08/23/11	45		1,210	0	OBLIGATION		
08/23/11	45			1,210	PROJECT PAYMENT	10292	09/09/11
09/07/11	48		241,160	0	OBLIGATION		
09/25/14	125		8,879	0	OBLIGATION		
09/25/14	125			32,995	PROJECT PAYMENT	40223	10/01/14
05/04/12				217,044	PROJECT PAYMENT	11006	05/15/12
06/09/16				0	OFFSET PROJECT PAYME	50656	06/15/16
Total:			345,310	345,310			

Balance: 0

Retention: 0

Available Balance: 0

# CITY COUNCIL

November 22, 2016

**TO: Mayor and City Council**

**FROM: Jeanie O'Laughlin, Finance Director**



**SUBJECT: Increase in Mayor, Council members, and City Treasurer Stipends**

## **BACKGROUND:**

At the Council meeting on November 8, 2016, a citizen brought forward a request to review the stipends paid to elected officials. The recommendation was for the stipend for the Mayor to increase from \$500 per month to \$1,500 per month; City Council members from \$300 to \$1,000 per month. Staff included City Treasurer as an elected official with an increase from \$200 per month to \$1,000 per month.

## **RECOMMENDATION:**

Staff asks for direction from the Council on this item.

## **FISCAL IMPACT:**

Currently, the total budget for elected officials salary and benefits is \$23,760. With the proposed adjustments, the total salary and benefits would be \$81,434; a total increase of \$57,674.

## **ENVIRONMENTAL ACTION:**

None.

## **ATTACHMENTS:**

Spreadsheet with calculations

NB2.

	A	B	C	D	E	F	G	H	I
1									
2									
3									
4	Fund 10	City Council 4111		Current		Proposed		Increase	
5									
6	4111-110	Regular salaries		\$ 20,400		\$ 66,000		\$ 45,600	
7	4111-132	Medicare		305		987		682	
8	4111-136	Workers' Comp.		97		314		217	
9	4111-141	PARS-Admin Fee		372		1,204		832	
10		Total		\$ 21,174		\$ 68,504		\$ 47,330	
11									
12		City Treasurer 4143							
13									
14	4111-110	Regular salaries		\$ 2,400		\$ 12,000		\$ 9,600	
15	4111-132	Medicare		35		175		140	
16	4111-141	Retirement		151		755		604	
17				\$ 2,586		\$ 12,930		\$ 10,344	
18									
19	TOTAL			\$ 23,760		\$ 81,434		\$ 57,674	
20									
21									
22		Proposed				Current			
23		Monthly	Annual			Monthly	Annual		
24	Mayor	\$ 1,500	\$18,000			\$ 500	\$ 6,000		
25	Council Members	\$ 1,000	\$48,000			\$ 300	\$ 14,400	\$ 20,400	
26	City Treasurer	\$ 1,000	\$12,000			\$ 200	\$ 2,400		



# CITY COUNCIL

November 22, 2016

**TO: Mayor and City Council**  
**FROM: Craig C Platt Public Works Director**  
**SUBJECT: City Water and Sewer Billing Frequently**

.....  
**BACKGROUND**

At the city council meeting June 29, 2010 the city approved a new water fee schedule and also moved from a bi-monthly billing schedule to better serve the residents by making the water and sewer bills more manageable but will also lesson the city's financial exposure.

The city's municipal code also needed to be updated to reflect the change. The current code reads; Domestic services will normally be billed bimonthly. Exceptions will be made at the discretion of the Director of Public Works, if more frequent billing is warranted. Normally, temporary and large services will be billed monthly.

The new code will read the following; Domestic services will normally be billed **monthly**. Exceptions will be made at the discretion of the Director of Public Works."

This update will correct the current language in the city's municipal code for the water and sewer utilities under Title 7 Sec. 7-1.409.

Section 7-1.316 City Work: General will also be updated to reflect changes made in the City's Master Fee schedule.

**RECOMMENDATION**

Staff recommends to introduce, by title only an **"AN ORDINANCE OF THE CITY COUNCIL OF CALIFORNIA CITY AMENDING THE CALIFORNIA CITY MUNICIPAL CODE AS IT RELATES TO THE FREQUENCY OF BILLING FOR WATER AND SEWER SERVICES AND COSTS ASSOCIATED WITH SERVICE CONNECTIONS"**

**FISCAL IMPACT**

NONE

**ATTACHMENTS**

AN ORDINANCE OF THE CITY COUNCIL OF CALIFORNIA CITY AMENDING THE CALIFORNIA CITY MUNICIPAL CODE

## ORDINANCE NO.

### AN ORDINANCE OF THE CITY COUNCIL OF CALIFORNIA CITY AMENDING THE CALIFORNIA CITY MUNICIPAL CODE AS IT RELATES TO THE FREQUENCY OF BILLING FOR WATER AND SEWER SERVICES AND COSTS ASSOCIATED WITH SERVICE CONNECTIONS

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CALIFORNIA  
CITY AS FOLLOWS:

**1. Purpose.**

This ordinance seeks to clarify the frequency of billing for water services.

**2. Amendment: Subdivisions: Payments Prior to Completion.**

Section 7-1.314 of the California City Municipal Code is amended and reenacted as follows:

**"Sec.- 7-1.314. Subdivisions: Payments Prior to Completion.**

- (a) Prior to approval of water system plans, the subdivider shall execute a deposit agreement for sufficient number of meters to serve each lot within the proposed subdivision. If additional meters are required prior to completion of construction; or if any lots require an increase in meter size, added fees and deposits shall be paid and revisions made in the deposit agreement. A credit will be allowed for excess deposits.
- (b) Construction water will be provided through a temporary service connected to the City's metered facilities through a main tap designed to accommodate the permanent water system required to service the subdivision for which such temporary water is requested. Fire hydrant meters may be used only at the discretion of the Director of Public Works.
- (c) The subdivider may pay the construction and conservation fees for the size of such master meter in addition to the cost of the meter and installation, and obtain water at regular rates or pay only for the setting of the master meter and obtain water at temporary water rates.
- (d) Temporary service connections shall be discontinued and terminated within six months after installation, unless, an extension of time is granted in writing by the Director of Public Works. Upon discontinuance of such temporary service, a refund of the salvage value of the recovered meter will be made.



- (e) Prior to the acceptance by the City of the water system, the subdivider shall pay the master meter charges and **monthly** service charges for each parcel within the subdivision occupied or approved for occupancy by the local agency with jurisdiction by law.
- (f) On acceptance by the City of the water system for a subdivision and payment of the final bill, the master meter charges shall cease and the subdivider shall be no longer responsible for the payment of **monthly** service charges for parcels within the subdivision.
- (g) On acceptance by the City of a portion of the water system for a subdivision, the subdivider shall no longer be responsible for the payment of **monthly** charges for the parcels within the portion of the subdivision receiving service from the accepted portion of the water system. The City will set up and maintain meter reading routes for meters turned on in areas accepted by the council. The total water passing through such meters will be subtracted from the subdivider's Master Meter reading, prior to the preparation of the master meter water bill."

**3. Amendment: City Work: General.**

Section 7-1.316 of the California City Municipal Code is amended and reenacted to read as follows:

**"Sec. 7-1.316.-City Work: General.**

- (a) The City intends to install certain transmission and distribution mains, pumping plants, and tanks throughout the City and within improvement districts with the proceeds of bonds, as the need arises. The City may undertake the expansion of facilities to serve the applicant's property if the facilities are shown on an improvement district plan or provide general City benefit.
- (b) The construction fund shall be used to pay for the installation of facilities to accommodate new customers and water demand. Facilities satisfy system deficiencies including but not limited to applicant's property, the Director of Public Works shall recommend to the council construction funds be expended for such propose.
- (c) When there is an existing distribution main in the public street or right-of-way, from which corner property may receive water service from the City, and a service connection is requested (except by a subdivider, who shall be required to pay the entire expense of the necessary main extension) beyond the corner property on the other frontage of the public street and the requested service connection requires an additional main extension, the City will install, **at customer's expense**, the necessary water main for the

width of the corner property or 150 feet, whichever is the shorter. Distances shall be measured from the front line of the corner property, projected if necessary to eliminate property returns.

- (d) The City **may** supply a meter box, meter, valves, pipes and connections to the upstream side of the meter, **at customer's expense**. Customer shall install pipes and vales on the downstream side of the meter to satisfy the customer's needs."

**4. Amendment: Potable Water **Monthly** Meter Service Charge Inside the City.**

Section 7-1.403 of the California City Municipal Code is amended and reenacted to read as follows:

**"Sec. 7-1.403.- Potable Water **Monthly** Meter Service Charge Inside the City.**

The City Council shall establish **monthly** water rates by resolution."

**5. Amendment: Private Fire protection Service.**

Section 7-1.405 of the California City Municipal Code is amended and reenacted to read as follows

**"Sec. 7-1.405.- Private Fire Protection Service.**

The **monthly** charge for private fire protection service shall be [amount]."

**6. Amendment: Billing Frequency.**

Section 7-1.409 of the California City Municipal Code is amended and reenacted to read as follows:

**"Sec. 7-1.409.- Billing Frequency.**

Domestic services will normally be billed **monthly**. Exceptions will be made at the discretion of the Director of Public Works."

**7. Amendment: Notice of Service Discontinuance Required.**

Section 7-1.411 of the California City Municipal Code is amended and reenacted to read as follows:

**"Sec. 7-1.411.- Notice of Service Discontinuance Required.**

Customers desiring to discontinue service should notify the City in writing at least two days prior to vacating the premises. Unless discontinuance is so ordered, the customer may be liable for the **monthly** service charges whether or not any water is used."



**8. Amendment: Proration of Charges for Odd Services.**

Section 7-1.413 of the California City Municipal Code is amended and reenacted to read as follows:

**"Sec. 7-1.413. - Proration of Charges for Odd Periods.**

Bills for water service for periods of time less than a month shall be prorated. Installation and Connection charges, however, will not be prorated. Customers will pay no less than the regularly established installation and connection charges for the size and class of service even if less than one (1) month's service is provided."

**9. Amendment: General.**

Section 7-2.401 of the California City Municipal Code is amended and reenacted to read as follows:

**"Sec. 7-2.401.- General.**

Sanitation service shall be provided by the City as long as the customer pays the rates, fees, charges, set forth herein and otherwise complies with the provisions of this Chapter. Sanitation service charges will be billed on a monthly basis."

**10. Amendment: Sewer Service Charges: Billing: Proration.**

Section 7-2.405 of the California City Municipal Code is amended and reenacted to read as follows:

**"Sec. 7-2.405. - Sewer Service Charges: Billing: Proration.**

Bills for sewer service for periods of time less than a month shall be prorated."

**11. Amendment: Meter Testing.**

Section 7-3.604 of the California City Municipal Code is amended and reenacted to read as follows:

**"Sec. 7-3.604. - Meter Testing.**

- (a) If recycled water meter fails to register during any period, or is known to register inaccurately, the customer shall be charged with an average daily consumption at the same season shown by the reading of the meter when in use and registering accurately. A customer may demand the meter through which water is being furnished be examined and tested by the City for the purpose of ascertaining whether or not it is correctly registering the amount of recycled water being delivered. Such demand shall be in writing and shall be accompanied by a deposit equal to the potable monthly service fee for sized meter.

- (b) Upon receipt of such demand and deposit, the City will have the meter examined and tested, and if upon such test the meter shall be found to register over 2% more water than actually passed through it, the meter shall be properly adjusted or another meter substituted therefor, the deposit shall be returned, and the recycled water bill for the current month will be adjusted proportionately. If the meter should be found to register not more than 2% more water than actually passes through it, the deposit shall be retained by the City to offset the expense of making the test."

**12. Severability.**

If any section, subsection, sentence, clause or phrase or word of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction or preempted by state legislation, such decision or legislation shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of California City hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause or phrase or word not declared unconstitutional without regard to any such decision or preemptive legislation.

**13. Inconsistencies.**

Any provision of the California City Municipal Code or appendices thereto inconsistent with the provisions of the Ordinance, to the extent of such inconsistencies and no further, are repealed or modified to that extent necessary to affect the provisions of this Ordinance.

**14.** The Mayor shall sign and the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published and posted pursuant to the provisions of law in that regard and this Ordinance shall take effect 30 days after its final passage.

Approved for introduction at a regular meeting on the 22<sup>nd</sup> day of November, 2016.

AYES:

NOES:

ABSENT:

PASSED, APPROVED, AND ADOPTED this \_\_\_\_th day of \_\_\_\_\_, 2016, by the following vote:

AYES:

NOES:

ABSENT:

\_\_\_\_\_  
Jennifer Wood, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Denise Hilliker, City Clerk

\_\_\_\_\_  
Christian Bettenhausen, City Attorney

STATE OF CALIFORNIA            )  
COUNTY OF KERN               ss.  
CITY OF CALIFORNIA CITY       )

I, DENISE HILLIKER, City Clerk of California City, do hereby certify that the foregoing ordinance was introduced on the \_\_\_\_\_<sup>th</sup> day of \_\_\_\_\_, 2016, was regularly adopted at a meeting thereof on the \_\_\_\_\_<sup>th</sup> day of \_\_\_\_\_, 2016 and was published/posted pursuant to law.

\_\_\_\_\_  
Denise Hilliker, City Clerk

**Staff Report**  
**City Council**  
**Council Meeting Date: November 22, 2016**

To: Mayor and City Council

From: Lieutenant Frank Huizar

Subject: MDC Fingerprint Readers

**Summary:**

The California City Police Department purchased our existing CAD/RMS system in January of 2008. The current system no longer meets the demands of our police department for information sharing. In an effort to ensure a better quality of life for our community and to cope with the changes in legislature and early release programs being mandated by the state, we have purchased Mobile Data Computers to address the increased volume of calls to our dispatch center.

With 3 and as much as 7 officers on duty at any given time, our dispatchers have become inundated with calls for service, both dispatched and officer initiated. Although staffing levels in the communications center have been increased during peak hours to two dispatchers to field the incoming calls from our community, emergency traffic can at time be compromised.

**Benefits:**

Currently our officers have no choice but to write down the addresses and critical information provided by dispatchers on a scratch pad or a notebook. As "in progress", emergency or medical calls are forwarded to our officers, they are forced to memorize much of the information as they respond to the call. This can be difficult as officers, are thinking of the fastest route to a location, the nature of the call and the typical road hazards.

Our RIMS Mobile Computer System provides the officer in the field access to RIMS (Record Information Management System), Computer Aided Dispatch and Records Management System to perform a multitude of valuable functions including the ability to:

1. Run State / NCIC (National Crime Information Center)
2. Receive incident dispatches
3. Change status and clear incidents
4. Add information and people to incidents directly
5. Send RIMS mail to dispatchers and all other RIMS users
6. Look up past incidents
7. Obtain case numbers electronically
8. Complete officer case reports
10. Review details of cases
11. Obtain a unit activity log

NB4.

12. Check for location history of local addresses and premises
13. Look up information from RIMS including: People, Vehicles, Citations, Warrants, Offenders, Phone Lists, Premises File, Photos and much, much more.

Our law enforcement neighbors (Arvin PD, Tehachapi PD, Bear Valley PD and Ridgecrest PD) have all gone to this system. Having spoken with some of their dispatchers and managers, this system has significantly cut down on radio traffic, allowing them to focus more on the callers when taking calls. The information which is obtained from the callers is automatically sent out to all of the officers as fast as the dispatcher can enter the information into the call. This in turn provides officers with updated and real time officer safety information.

With criminals becoming more sophisticated and elusive, we owe it to our community to embrace new technology that will facilitate our law enforcement efforts. Our software provides us with the ability to have interoperability between agencies with the same software.

The Mobile Data Computers have already been paid for and installed. However, the final piece of equipment to get this equipment operable and in compliance with the Department of Justice is a finger print reader in each MDC. This verifies the user, the time and the authority to operate the equipment which provides sensitive confidential law enforcement information. For the purposes of departmental transparency, it tracks every database the operator has accessed when the computer is audited. Without a finger print reader, we will not be DOJ compliant, essentially making the MDCs ineffective.

**Costs:**

The California City Police Department was awarded a total of **\$70,630.46** in grant funds to purchase these **(14)** Mobile Data Computers and mounting brackets. These MDCs are specifically equipped to operate our RIMS software.

**Fiscal Impact:**

(14) Mobile Data Computers and Mounts	-	\$70,630.46
(14) Fingerprint Readers	-	(14) X \$110.00 = \$1540.00
Fingerprint Readers Sales Tax	-	\$115.50
<hr/>		
<b>Subtotal</b>	-	<b>\$72,285.96</b>
<b>Grant</b>	-	<b>\$70,630.46</b>
<hr/>		
<b>Total Equipment Cost:</b>	-	<b>\$1,655.50</b>

The funds will come from budget line item: 18-4212-633.

**Recommendation:**

Staff recommends Council approve funding for the purchase of the fingerprint readers in order to operate the MDCs and be in compliance with the Department of Justice.

**Environmental Impact:** N/A

*The finance director has reviewed the staff report and finds the recommendations to be within the budget constraints of the Department.*



Thank you for your business!



# CITY COUNCIL

November 22, 2016

**TO: Mayor and City Council**  
**FROM: Craig C Platt, Public Works Director**  
**SUBJECT: City Engineering Contract**

.....  
**BACKGROUND**

On April 17<sup>th</sup>, 2013 the City of California City requested sealed Statements of Qualification for Professional Service for City Engineer, including FHWA, FEMA and FAA experience. The RFQ notice was posted in Bakersfield Californian, Mojave Desert News and Antelope Valley Press.

The scope of this proposal is to assist the City in all aspects of engineering services, including but not limited to project design, construction management, including necessary change orders, material testing, soil testing, environmental clearances and completion and or approval of all required documentation which also requires the submittal of all reports to state and federal agencies. The Successful firm will be required to represent the City with all state and federal project audits.

The closing date was May 10<sup>th</sup>, 2013 and three RFQ packages were mailed and only one response was received from Helt Engineering.

At the May 21<sup>st</sup>, 2013 council meeting a subcommittee was formed comprised of the City Manager, Councilmember McGuire and Mayor Pro Tem Fuller. Per Caltrans procedures, the qualifications were reviewed by the subcommittee to determine if Helt Engineering was complete and compliant. After the independent reviews by member of the subcommittee it was found the Helt Engineering had met all requirements as outlined in the RFQ.

The City entered into a three year contract with a two year option. The three year term ended March 31<sup>st</sup>, 2016 and was extended six month at the April 12<sup>th</sup>, 2016 council meeting.

This has created a major problem; when the Federal Government reviewed Caltrans procedures and performed an audit on a large bridge project and they found that there could have been a conflict with design and inspections on projects when using a single consulting engineering firm who designed and was also performing the inspections on the same project. This has become a big problem with cities in California and even a bigger problem in small city like ours. The solutions being pushed were to release an RFP on every project using state funds (Federal Dollars) and use a different engineering firm to inspect on every project. This would be extremely costly to the city

and would also have an impact on the time it takes to deliver a project. One other possibility would be to issue an RFP for on call engineering services and issue contracts to several firms to work on city projects. This proposal will also increase the overall costs to the city and delay projects.

The City would still need to employ a City engineer to work on projects that are not using State Funds (Federal Funds). Cities with contracts issued before the chapter 10 update are valid and our current City engineering contract can be extended through April 2018.

Caltrans update to chapter 10 supports city's that use contract City engineers over consulting engineering firms by allowing the city engineer to design and inspect a project if you use the guide lines in chapter 10 Consultant Selection in the Local Assistance Procedures Manual. Engineering contracts under Federal law cannot exceed more than five years.

I have included a complete cost breakdown for all projects performed by the city engineer from 2013.

Helt Engineering has maintained an excellent working relationship with the FAA, Caltrans and Kern County of Governments and has done an excellent job for the city with project delivery.

Staff recommends using the current contract format and extending it through the five year limit to March 31, 2018 and releasing a RFQ under the Local Assistance Procedures Manual Chapter 10 Consultant Selection guidelines about six months before the contract end date.

### **RECOMMENDATION**

Staff recommends exercising the remaining 18 months on the current contract through March 31, 2018 and releasing an RFQ for city engineering services six months before the contact end date.

### **FISCAL IMPACT**

Currently Budgeted

### **ATTACHMENTS**

Helt Engineering Contract  
Agreement Addendum  
Local Assistance Procedures Manual - Chapter 10 Consultant Selection.  
Pleasanton RFQ For On Call Services For General Civil Engineering Services.

AGREEMENT  
AGREEMENT FOR CONSULTANT ENGINEER SERVICES

**ARTICLE I - INTRODUCTION**

- A. This Agreement is between the following named, hereinafter referred to as, CONSULTANT and the following named, hereinafter referred to as, CITY:

The name of the CONSULTANT is as follows: Helt Engineering, Inc.  
Incorporated in the State of California  
The Project Manager for the "CONSULTANT" will be: Jerry Helt, PE

The name of the "CITY" is as follows: City of California City  
The Contract Manager for the CITY will be: Public Works Director

- B. The work to be performed under this Agreement is described in Article II entitled Statement of Work and the approved CONSULTANT's Cost Proposal dated 17 April 2013. The approved CONSULTANT's Cost Proposal is attached hereto (**Attachment I**) and incorporated by reference. If there is any conflict between the approved Cost Proposal and this Agreement, this Agreement shall take precedence.
- C. Indemnification and Hold Harmless. CONSULTANT agrees to defend, indemnify, hold free and harmless the CITY, its elected officials, officers, agents and employees, at CONSULTANT's sole expense, from and against any and all claims, actions, suits or other legal proceedings brought against the CITY, its elected officials, officers, agents and employees arising out of the performance of the CONSULTANT, its employees, and/or authorized subcontractors, of the work undertaken pursuant to this Agreement. The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by the CONSULTANT, its employees, and/or authorized subcontractors, but shall be required whenever any claim, action, complaint, or suit asserts as its basis the negligence, errors, omissions or misconduct of the CONSULTANT, its employees, and/or authorized subcontractors, and/or whenever any claim, action, complaint or suit asserts liability against the CITY, its elected officials, officers, agents and employees based upon the work performed by the CONSULTANT, its employees, and/or authorized subcontractors under this Agreement, whether or not the CONSULTANT, its employees, and/or authorized subcontractors are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, the CONSULTANT shall not be liable for the defense or indemnification of the CITY for claims, actions, complaints or suits arising out of the sole active negligence or willful misconduct of the CITY. This provision shall supersede and replace all other indemnity provisions contained either in the CITY's specifications or CONSULTANT's Proposal, which shall be of no force and effect.
- D. Independent Contractor. CONSULTANT is and shall be acting at all times as an independent contractor and not as an employee of CITY. CONSULTANT shall have no power to incur any debt, obligation, or liability on behalf of CITY or otherwise act on behalf of CITY as an agent. Neither CITY nor any of its agents shall have control over the conduct of CONSULTANT or any of CONSULTANT's employees, except as set forth in this Agreement. CONSULTANT shall not, at any time, or in any manner, represent that it or any of its or employees are in any manner agents or employees of CITY. CONSULTANT shall secure, at its sole expense, and be responsible for any and all payment of Income Tax, Social Security, State Disability Insurance Compensation, Unemployment Compensation, and other payroll deductions for

CONSULTANT and its officers, agents, and employees, and all business licenses, if any are required, in connection with the services to be performed hereunder. CONSULTANT shall indemnify and hold CITY harmless from any and all taxes, assessments, penalties, and interest asserted against CITY by reason of the independent contractor relationship created by this Agreement. CONSULTANT further agrees to indemnify and hold CITY harmless from any failure of CONSULTANT to comply with the applicable worker's compensation laws. CITY shall have the right to offset against the amount of any fees due to CONSULTANT under this Agreement any amount due to CITY from CONSULTANT as a result of CONSULTANT's failure to promptly pay to CITY any reimbursement or indemnification arising under this paragraph.

- F. PERS Eligibility Indemnification. In the event that CONSULTANT or any employee, agent, or subcontractor of CONSULTANT providing services under this Agreement claims or is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the CITY, CONSULTANT shall indemnify, defend, and hold harmless CITY for the payment of any employee and/or employer contributions for PERS benefits on behalf of CONSULTANT or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of CITY.

Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, CONSULTANT and any of its employees, agents, and subcontractors providing service under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by CITY, including but not limited to eligibility to enroll in PERS as an employee of CITY and entitlement to any contribution to be paid by CITY for employer contribution and/or employee contributions for PERS benefits

- G. Without the written consent of the CITY, this agreement is not assignable by CONSULTANT either in whole or in part.
- H. No alteration or variation of the terms of this Agreement shall be valid, unless made in writing and signed by the parties hereto; and no oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto.
- I. The consideration to be paid CONSULTANT as provided herein, shall be in compensation for all of CONSULTANT's expenses incurred in the performance hereof, including travel and per diem, unless otherwise expressly so provided.

## **ARTICLE II - STATEMENT OF WORK**

### **A. Consultant Services**

CONSULTANT shall provide professional engineering services to the CITY. This includes, but is not limited to: preparing project advertisement, review and qualification of bids, processing documents for bid award, construction inspection and management, construction surveying, processing documents required for CITY acceptance of project(s), processing documents for FHWA, FAA, FEMA, Caltrans, CalEMA project reimbursement and closeout. CITY will pay for direct project advertisement costs.

- B. Right of Way
- Caltrans or FHWA approved the Right of Way Certification(s) as required.
- C. Subsurface Investigations
- Soils testing and any other specialized services will be performed by others and supervised by the CONSULTANT.
- D. City Obligations
- The CITY will provide any applicable data requested by the CONSULTANT to complete the project(s).
- E. Conferences, Visits to Site, Inspection of Work
- The agreement provides for conferences as needed, visits to the site, and inspection of the work by representatives of the state, or federal agencies. Costs incurred by CONSULTANT for meetings, subsequent to the initial meeting shall be included in the fee.
- F. Checking Shop Drawings
- Payment for checking shop drawings by the CONSULTANT may be included in the Agreement fee.
- G. Documentation
- The CONSULTANT shall document projects to the satisfaction of the CITY or any funding agency, including, but not limited to (Caltrans, CalEMA, FHWA, FAA and FEMA). This includes, but is not limited to, preparation of progress and final reports, field journal or similar evidence of attainment of the objectives.
- H. Number of Copies
- One copy of reports shall be provided to the CITY. If requested, additional copies will be provided at reproduction cost.

### **ARTICLE III - CONSULTANT'S REPORTS AND/OR MEETINGS**

- I. The CONSULTANT shall submit progress reports on each specific project in accordance with the Task Order. These reports shall be submitted at least once a month. The report should be sufficiently detailed for the CITY's Contract Manager to determine, if the CONSULTANT is performing to expectations, or is on schedule; to provide communication of interim findings, and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.
- J. The CONSULTANT's Project Manager shall meet with the CITY's Contract Manager or Project Coordinator, as needed, to discuss progress on the project.

#### **ARTICLE IV - PERFORMANCE PERIOD**

- A. This Agreement shall go into effect on 17 April 2013, contingent upon approval by the CITY, and the CONSULTANT shall commence work after notification to proceed by the CITY'S Contract Manager. The Agreement shall end on 31 March 2016, unless extended by Agreement amendment.
- B. The CONSULTANT is advised that any recommendation for Agreement award is not binding on the CITY until the Agreement is fully executed and approved by the CITY.
- C. The period of performance for each specific project shall be in accordance with the Task Order for that project. If work on a Task Order is in progress on the expiration date of this Agreement, the terms of the Agreement may be extended by Agreement amendment.

#### **ARTICLE V - ALLOWABLE COSTS AND PAYMENTS**

- A. Specific projects will be assigned to the CONSULTANT through issuance of Task Orders (**Attachment II**).
- B. After a project to be performed under this Agreement is identified by the CITY, the CITY will prepare a draft Task Order; less the cost estimate. A draft Task Order will identify the scope of services, expected results, project deliverables, period of performance, project schedule and will designate a CITY Project Coordinator. The draft Task Order will be delivered to the CONSULTANT for review. The CONSULTANT shall return the draft Task Order within ten (10) calendar days along with a Cost Estimate, including a written estimate of the number of hours and hourly rates per staff person, any anticipated reimbursable expenses, overhead, fee if any, and total dollar amount. After agreement has been reached on the negotiable items and total cost; the finalized Task Order shall be signed by both the CITY and the CONSULTANT.
- C. The CONSULTANT will be reimbursed for hours worked at the hourly rates specified in the CONSULTANT's Cost Proposal (**Attachment I**). The specified hourly rates shall include direct salary costs, employee benefits, overhead, and fee.
- D. In addition, the CONSULTANT will be reimbursed for incurred direct costs other than salary costs, and other costs that are identified in the executed Task Order.
- E. Reimbursement for transportation and subsistence costs shall not exceed the rates as specified in the approved Cost Proposal.
- F. When milestone cost estimates are included in the approved Cost Proposal, the CONSULTANT shall obtain prior written approval for a revised milestone cost estimate from the Contract Manager before exceeding such estimate.
- G. Progress payments for each Task Order will be made monthly in arrears based on services provided and actual costs incurred.
- H. The CONSULTANT shall not commence performance of work or services until this Agreement has been approved by the CITY, and notification to proceed has been issued by the CITY'S Contract Manager. No payment will be made prior to approval or for any work performed prior to approval of this Agreement.



- I. A Task Order is of no force or effect until returned to the CITY and signed by an authorized representative of the CITY. No expenditures are authorized on a project and work shall not commence until a Task Order for that project has been executed by the CITY.
- J. The CONSULTANT will be reimbursed, as promptly as fiscal procedures will permit upon receipt by the CITY'S Contract Manager of itemized invoices in triplicate. Separate invoices itemizing all costs are required for all work performed under each Task Order. Invoices shall be submitted no later than 45-calendar days after the performance of work for which the CONSULTANT is billing, or upon completion of the Task Order. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this Agreement number, project title and Task Order number. Credits due the CITY that include any equipment purchased under the provisions of Article XVI Equipment Purchase of this Agreement, must be reimbursed by the CONSULTANT prior to the expiration or termination of this Agreement. Invoices shall be mailed to the CITY's Contract Manager at the following address:
- Public Works Director  
City of California City  
21000 Hacienda Blvd.,  
California City, CA 93505
- K. The total amount payable by the CITY for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless authorized by Agreement amendment.
- L. The total amount payable by the CITY for any Task Order resulting from this Agreement, shall not exceed \$ 100,000.00. It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under this Agreement through Task Orders.
- M. All subcontracts in excess of \$25,000 shall contain the above provisions.

#### ARTICLE VI - TERMINATION

- A. Notice of Termination. The CITY reserves and has the right and privilege of canceling, suspending or abandoning the execution of all or any part of the work contemplated by this Agreement, with or without cause, at any time, by providing written notice to CONSULTANT. The termination of this Agreement shall be deemed effective upon receipt of the notice of termination. In the event of such termination, CONSULTANT shall immediately stop rendering services under this Agreement unless directed otherwise by the CITY.
- B. Compensation. In the event of termination, CITY shall pay CONSULTANT for reasonable costs incurred and professional services satisfactorily performed up to and including the date of CITY's written notice of termination. Compensation for work in progress shall be prorated as to the percentage of work completed as of the effective date of termination in accordance with the fees set forth herein. In ascertaining the professional services actually rendered hereunder up to the effective date of termination of this Agreement, consideration shall be given to both completed work and work in progress, to complete and incomplete drawings, and to other documents pertaining to the services contemplated herein whether delivered to the CITY or in the possession of the CONSULTANT.

- C. Documents. In the event of termination of this Agreement, all documents prepared by CONSULTANT in its performance of this Agreement including, but not limited to, finished or unfinished design, development and construction documents, data studies, drawings, maps and reports, shall be delivered to the CITY within ten (10) days of delivery of termination notice to CONSULTANT, at no cost to CITY. Any use of uncompleted documents without specific written authorization from CONSULTANT shall be at CITY's sole risk and without liability or legal expense to CONSULTANT.

#### **ARTICLE VII - FUNDING REQUIREMENTS**

- A. It is mutually understood between the parties that this Agreement may have been written before ascertaining the availability of funds or appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if the agreement were executed after that determination was made.
- B. This agreement is valid and enforceable only if sufficient funds are made available to the CITY for the purpose of this Agreement. In addition, this agreement is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress, State Legislature or CITY governing board that may affect the provisions, terms, or funding of this Agreement in any manner.
- C. It is mutually agreed that if sufficient funds are not appropriated, this Agreement may be amended to reflect any reduction in funds.
- D. The CITY has the option to void the Agreement pursuant to Article VI Termination, or by mutual agreement to amend the Agreement to reflect any reduction of funds.

#### **ARTICLE VIII - CHANGE IN TERMS**

- A. This Agreement may be amended or modified only by mutual written agreement of the parties.
- B. The CONSULTANT shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided by the CITY's Contract Manager.
- C. There shall be no change in the CONSULTANT's Project Manager or members of the project team, as listed in the approved Cost Proposal, which is a part of this Agreement without prior written approval by the CITY's Contract Manager.

#### **ARTICLE IX - DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION**

The CONSULTANT or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The CONSULTANT shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of contracts. Failure by the CONSULTANT to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy, as the recipient deems appropriate.

Use EXHIBIT 10-I Notice to Proposers Disadvantaged Business Enterprise Information and Exhibit 10-J EXHIBIT 10-J Standard Agreement For Subcontractor/DBE Participation as applicable.

#### **ARTICLE X - COST PRINCIPLES**

- A. The CONSULTANT agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., shall be used to determine the allowability of cost individual items.
- B. The CONSULTANT also agrees to comply with federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
- C. Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., are subject to repayment by CONSULTANT to the CITY.

#### **ARTICLE XI - CONTINGENT FEE**

The CONSULTANT warrants, by execution of this Agreement that no person or selling agency has been employed, or retained, to solicit or secure this Agreement upon an agreement or understanding, for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial or selling agencies maintained by the CONSULTANT for the purpose of securing business. For breach or violation of this warranty, the CITY has the right to annul this Agreement without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the Agreement price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

#### **ARTICLE XII - RETENTION OF RECORDS/AUDIT**

For the purpose of determining compliance with Public Contract Code 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., when applicable and other matters connected with the performance of the Agreement pursuant to Government Code 8546.7, 49 CFR Part 18.36(i), FAA Order 5100.38, and any other applicable law; the CONSULTANT, subcontractors, and the CITY shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of the Agreement, including but not limited to, the costs of administering the Agreement. All parties shall make such materials available at their respective offices at all reasonable times during the Agreement period and for three years from the date of final payment under the Agreement. The state, the State Auditor, CITY, FHWA, or any duly authorized representative of the federal government shall have access to any books, records, and documents of the CONSULTANT that are pertinent to the Agreement for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.

Subcontracts in excess of \$25,000 shall contain this provision.

#### **ARTICLE XIII - DISPUTES**

- A. Any dispute, other than audit, concerning a question of fact arising under this Agreement that is not disposed of by agreement shall be decided by a committee consisting of the CITY's Contract Manager and City Manager, who may consider written or verbal information submitted by the CONSULTANT.
- B. Not later than 30 days after completion of all work under the Agreement, the CONSULTANT may request review by the City Governing Board of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.
- C. Neither the pendency of a dispute, nor its consideration by the committee will excuse the CONSULTANT from full and timely performance in accordance with the terms of this Agreement.

#### **ARTICLE XIV - AUDIT REVIEW PROCEDURES**

- A. Any dispute concerning a question of fact arising under an interim or post audit of this Agreement that is not disposed of by agreement, shall be reviewed by the City Manager or his designee.
- B. Neither the pendency of a dispute nor its consideration by the CITY will excuse the CONSULTANT from full and timely performance, in accordance with the terms of this Agreement.

#### **ARTICLE XV - SUBCONTRACTING**

- A. The CONSULTANT shall perform the work contemplated with resources available within its own organization; and no portion of the work pertinent to this Agreement shall be subcontracted without written authorization by the CITY'S Contract Manager, except that, which is expressly identified in the approved Cost Proposal.
- B. Any subcontract in excess of \$25,000 entered into as a result of this Agreement, shall contain all the provisions stipulated in this Agreement to be applicable to subcontractors.
- C. Any substitution of subcontractors must be approved in writing by the CITY's Contract Manager.

#### **ARTICLE XVI - EQUIPMENT PURCHASE**

- A. Prior authorization in writing, by the CITY's Contract Manager shall be required before the CONSULTANT enters into any purchase order, or subcontract for supplies, equipment, or CONSULTANT services. The CONSULTANT shall provide an evaluation of the necessity or desirability of incurring such costs.
- B. Purchases will be made consistent with the CITY's purchasing ordinances, regulations, and policies.
- C. Any equipment purchased as a result of this Agreement is subject to the following: "The CONSULTANT shall maintain an inventory of all nonexpendable property. Nonexpendable

property is defined as having a useful life of at least two years and an acquisition cost of \$5,000 or more. If the purchased equipment needs replacement and is sold or traded in, the CITY shall receive a proper refund or credit at the conclusion of the Agreement, or if the Agreement is terminated, the CONSULTANT may either keep the equipment and credit the CITY in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established CITY procedures; and credit the CITY in an amount equal to the sales price. If the CONSULTANT elects to keep the equipment, fair market value shall be determined at the CONSULTANT's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by the CITY and the CONSULTANT, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by the CITY."

- D. All subcontracts in excess \$25,000 shall contain the above provisions.

#### ARTICLE XVII INSPECTION OF WORK

The CONSULTANT and any subcontractor shall permit the CITY; the State; FHWA, FEMA, FAA, and any other relevant federal representative (if federal participating funds are used in this contract) to review and inspect the project activities and files at all reasonable times during the performance period of this Agreement including review and inspection on a daily basis.

#### ARTICLE XVIII SAFETY

- A. The CONSULTANT shall comply with OSHA regulations applicable to CONSULTANT regarding necessary safety equipment or procedures. The CONSULTANT shall comply with safety instructions issued by the CITY Safety Officer and other CITY representatives. CONSULTANT personnel shall wear hard hats and safety vests at all times while working on the construction project site.
- B. Pursuant to the authority contained in Section 591 of the Vehicle Code, the CITY has determined that such areas are within the limits of the project and are open to public traffic. The CONSULTANT shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. The CONSULTANT shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.
- C. Any subcontract entered into as a result of this Agreement, shall contain all of the provisions of this Article.

#### ARTICLE XIX - INSURANCE

- A. Minimum Scope and Limits of Insurance. Prior to commencement of any work under this Agreement, CONSULTANT shall obtain, maintain, and keep in full force and effect during the life of this Agreement all of the following minimum scope of insurance coverages with an insurance company admitted to do business in California, rated "A," Class X, or better in the most recent Best's Key Insurance Rating Guide, and approved by CITY:

- a. Commercial general liability, including premises-operations, products/completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury or bodily injury with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or shall be twice the required occurrence limit.
  - b. Business automobile liability for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence for bodily injury and property damage.
  - c. Workers' compensation insurance as required by the State of California. CONSULTANT agrees to waive, and to obtain endorsements from its workers' compensation insurer waiving subrogation rights under its workers' compensation insurance policy against the CITY, its officers, agents, employees, and volunteers arising from work performed by CONSULTANT for the CITY and to require each of its subcontractors, if any, to do likewise under their workers' compensation insurance policies.
  - d. Professional errors and omissions ("E&O") liability insurance with policy limits of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate. Architects' and engineers' coverage shall be endorsed to include contractual liability. If the policy is written as a "claims made" policy, the retro date shall be prior to the start of the Agreement work. CONSULTANT shall obtain and maintain, said E&O liability insurance during the life of this Agreement and for three years after completion of the work hereunder.
- B. Endorsements. The commercial general liability insurance policy and business automobile liability policy shall contain or be endorsed to contain the following provisions:
- a. Additional insureds: "The CITY of California CITY and its elected and appointed boards, officers, officials, agents, employees, and volunteers are additional insureds with respect to: liability arising out of activities performed by or on behalf of the CONSULTANT pursuant to its Agreement with the CITY; products and completed operations of the CONSULTANT; premises owned, occupied or used by the CONSULTANT; automobiles owned, leased, hired, or borrowed by the CONSULTANT."
  - b. Notice: "Said policy shall not terminate, be suspended, or voided, nor shall it be cancelled, nor the coverage or limits reduced, until thirty (30) days after written notice is given to City."
  - c. Other insurance: "The CONSULTANT's insurance coverage shall be primary insurance as respects the City of California City, its officers, officials, agents, employees, and volunteers. Any other insurance maintained by the City of California City shall be excess and not contributing with the insurance provided by this policy."
  - d. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the City of California City, its officers, officials, agents, employees, and volunteers.

- e. The CONSULTANT's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- C. Deductible or Self Insured Retention. If any of such policies provide for a deductible or self-insured retention to provide such coverage, the amount of such deductible or self-insured retention shall be approved in advance by CITY. No policy of insurance issued as to which the CITY is an additional insured shall contain a provision which requires that no insured except the named insured can satisfy any such deductible or self-insured retention.
- D. Certificates of Insurance: CONSULTANT shall provide to CITY certificates of insurance showing the insurance coverages and required endorsements described above, in a form and content approved by CITY, prior to performing any services under this Agreement.
- E. Non-limiting: Nothing in this Section shall be construed as limiting in any way, the indemnification provision contained in this Agreement, or the extent to which CONSULTANT may be held responsible for payments of damages to persons or property.

#### ARTICLE XX - OWNERSHIP OF DATA

- A. Upon completion of all work under this Agreement, ownership and title to all reports, documents, plans, specifications, and estimates produce as part of this Agreement will automatically be vested in the CITY; and no further agreement will be necessary to transfer ownership to the CITY. The CONSULTANT shall furnish the CITY all necessary copies of data needed to complete the review and approval process.
- B. It is understood and agreed that all calculations, drawings and specifications, whether in hard copy or machine-readable form, are intended for one-time use in the construction of the project for which this Agreement has been entered into.
- C. The CONSULTANT is not liable for claims, liabilities, or losses arising out of, or connected with the modification, or misuse by the CITY of the machine-readable information and data provided by the CONSULTANT under this agreement; further, the CONSULTANT is not liable for claims, liabilities, or losses arising out of, or connected with any use by the CITY of the project documentation on other projects for additions to this project, or for the completion of this project by others except only such use as may be authorized in writing by the CONSULTANT.
- D. Applicable patent rights provisions described in 41 CFR 1-91, regarding rights to inventions shall be included in the Agreements as appropriate.
- E. The CONSULTANT is not liable for claims, liabilities or losses arising out of, or connected with, the modification or misuse by the CITY of the machine readable information and data provided by the CONSULTANT under this agreement; further, the CONSULTANT is not liable for claims, liabilities or losses arising out of, or connected with, any use by the CITY of the project documentation on other projects; for additions to this project, or for the completion of this project by others, except only such use as may be authorized, in writing, by the CONSULTANT.



- F. The CITY may permit copyrighting reports or other agreement products. If copyrights are permitted; the agreement shall provide that the FHWA, FEMA, FAA, and any other relevant federal agency shall have the royalty-free nonexclusive and irrevocable right to reproduce, publish, or otherwise use; and to authorize others to use, the work for government purposes.
- G. Any subcontract in excess of \$25,000 entered into as a result of this Agreement, shall contain all of the provisions of this Article.

#### **ARTICLE XXI - CLAIMS FILED BY CITY'S CONSTRUCTION CONTRACTOR**

- A. If claims are filed by the CITY's construction contractor relating to work performed by CONSULTANT's personnel, and additional information or assistance from the CONSULTANT's personnel is required in order to evaluate or defend against such claims; CONSULTANT agrees to make its personnel available for consultation with the CITY'S construction Agreement administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.
- B. CONSULTANT's personnel that the CITY considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from the CITY. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for the CONSULTANT's personnel services under this agreement.
- C. Services of the CONSULTANT's personnel in connection with the CITY's construction contractor claims will be performed pursuant to a written Agreement amendment, if necessary, extending the termination date of this agreement in order to finally resolve the claims.
- D. Any subcontract in excess of \$25,000 entered into as a result of this Agreement, shall contain all of the provisions of this Article.

#### **ARTICLE XXII - CONFIDENTIALITY OF DATA**

- A. All financial, statistical, personal, technical, or other data and information relative to the CITY's operations, which are designated confidential by the CITY and made available to the CONSULTANT in order to carry out this Agreement, shall be protected by the CONSULTANT from unauthorized use and disclosure.
- B. Permission to disclose information on one occasion, or public hearing held by the CITY relating to the Agreement, shall not authorize the CONSULTANT to further disclose such information, or disseminate the same on any other occasion.
- C. The CONSULTANT shall not comment publicly to the press or any other media regarding the Agreement or the CITY's actions on the same, except to the CITY's staff, CONSULTANT's own personnel involved in the performance of this Agreement, at public hearings or in response to questions from a Legislative committee.
- D. The CONSULTANT shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this Agreement without prior review of the contents thereof by the CITY, and receipt of the CITY'S written permission.

- E. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this Article.
- F. All information related to the construction estimate is confidential, and shall not be disclosed by the CONSULTANT to any entity other than the CITY.

#### **ARTICLE XXIII - NATIONAL LABOR RELATIONS BOARD CERTIFICATION**

In accordance with Public Contract Code Section 10296, the CONSULTANT hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against the CONSULTANT within the immediately preceding two-year period, because of the CONSULTANT's failure to comply with an order of a federal court that orders the CONSULTANT to comply with an order of the National Labor Relations Board.

#### **ARTICLE XXIV - EVALUATION OF CONSULTANT**

The CONSULTANT's performance will be evaluated by the CITY. A copy of the evaluation will be sent to the CONSULTANT for comments. The evaluation together with the comments shall be retained as part of the Agreement record.

#### **ARTICLE XXV - STATEMENT OF COMPLIANCE**

The CONSULTANT's signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California that the CONSULTANT has, unless exempt, complied with, the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.

#### **ARTICLE XXVI - DEBARMENT AND SUSPENSION CERTIFICATION**

- A. The CONSULTANT's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that the CONSULTANT has complied with Title 49, Code of Federal Regulations, Part 29, Debarment and Suspension Certificate, which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to the CITY.
- B. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining CONSULTANT responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.

#### **ARTICLE XXVII - STATE PREVAILING WAGE RATES**

- A. The CONSULTANT shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 177, and all federal, state, and local laws and ordinances applicable to the work.
- B. Any subcontract entered into as a result of this Agreement if for more than \$25,000 for public works construction or more than \$15,000 for the alteration, demolition, repair, or maintenance of public works, shall contain all of the provisions of this Article.

#### **ARTICLE XXVIII - CONFLICT OF INTEREST**

- A. The CONSULTANT shall disclose any financial, business, or other relationship with CITY that may have an impact upon the outcome of this Agreement, or any ensuing CITY construction project. The CONSULTANT shall also list current clients who may have a financial interest in the outcome of this Agreement, or any ensuing CITY construction project, which will follow.
- B. The CONSULTANT hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this agreement.
- C. Any subcontract in excess of \$25,000 entered into as a result of this Agreement, shall contain all of the provisions of this Article.
- D. The CONSULTANT hereby certifies that neither CONSULTANT, nor any firm affiliated with the CONSULTANT will bid on any construction Agreement, or on any Agreement to provide construction inspection for any construction project resulting from this Agreement. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise.
- E. Except for subcontractors whose services are limited to providing surveying or materials testing information, no subcontractor who has provided design services in connection with this Agreement shall be eligible to bid on any construction Agreement, or on any Agreement to provide construction inspection for any construction project resulting from this Agreement.

#### **ARTICLE XXIX - REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION**

The CONSULTANT warrants that this Agreement was not obtained or secured through rebates kickbacks or other unlawful consideration, either promised or paid to any CITY employee and was obtained in compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor Regulations (29 CFR Part 3). For breach or violation of this warranty, CITY shall have the right in its discretion; to terminate the Agreement without liability; to pay only for the value of the work actually performed; or to deduct from the Agreement price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

#### **ARTICLE XXX - PROHIBITION OF EXPENDING CITY STATE OR FEDERAL FUNDS FOR LOBBYING**

- A. Pursuant to 49 CFR Part 20, Appendix A and applicable law, the CONSULTANT certifies to the best of his or her knowledge and belief that:

1. No state, federal or CITY appropriated funds have been paid, or will be paid by-or-on behalf of the CONSULTANT to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or federal Agreement, grant, loan, or cooperative agreement.
  2. If any funds other than federal appropriated funds have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency; a Member of Congress; an officer or employee of Congress, or an employee of a Member of Congress; in connection with this federal Agreement, grant, loan, or cooperative agreement; the CONSULTANT shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, US. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- C. The CONSULTANT also agrees by signing this document that he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000, and that all such sub-recipients shall certify and disclose accordingly.

#### ARTICLE XXXI - NOTIFICATION

All notices hereunder and communications regarding interpretation of the terms of this Agreement and changes thereto, shall be effected by the mailing thereof by registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

CONSULTANT: Helt Engineering, Inc.  
Jerry Helt, PE  
2930 Union Ave.  
Bakersfield, CA 93305

CITY: City Manager  
City of California City  
21000 Hacienda Blvd.  
California City, CA 93505

#### ARTICLE XXXII – NON-DISCRIMINATION

In performing this Agreement, CONSULTANT shall not engage in, nor permit its agents to engage in, discrimination in employment of persons because of their race, religion, color, national origin, ancestry, age, physical handicap, medical condition, marital status, sexual gender or sexual orientation, except as permitted pursuant to Section 12940 of the Government Code.

#### **ARTICLE XXXIII – FEDERAL EMERGENCY MANAGEMENT ADMINISTRATION REQUIREMENTS**

In performing this Agreement, CONSULTANT, where applicable, warrants that he or she is familiar with and shall also comply with the following applicable laws and regulations:

1. Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor Regulations (41 CFR Chapter 60).
2. The Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3).
3. The Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR Part 5).
4. Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5).
5. All applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).
6. Compliance with the State of California's energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

For breach or violation of any of CONSULTANT's warranty or these compliance requirements, CITY shall have the right in its discretion; to terminate the Agreement without liability; to pay only for the value of the work actually performed; or to deduct from the Agreement price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

#### **Article XXXIV – FEDERAL AVIATION ADMINISTRATION REQUIREMENTS**

In performing this Agreement, CONSULTANT, where applicable, warrants that he or she is familiar with and shall also comply with the following laws and regulations:

##### **A. Civil Rights Act of 1964, Title VI – CONSULTANT Contractual Requirements**

- a. Compliance with Regulations. The CONSULTANT shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Agreement.
- b. Nondiscrimination. The CONSULTANT, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations,

including employment practices when the Agreement covers a program set forth in Appendix B of the Regulations.

- c. Solicitations for Subcontracts, Including Procurements of Materials and Equipment. In all solicitations either by competitive bidding or negotiation made by the CONSULTANT for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the CONSULTANT of the CONSULTANT's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
- d. Information and Reports. The CONSULTANT shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the CITY or the Federal Aviation Administration (FAA) to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information, the CONSULTANT shall so certify to the CITY or the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information.
- e. Sanctions for Noncompliance. In the event of the CONSULTANT's noncompliance with the nondiscrimination provisions of this Agreement, the CITY shall impose such Agreement sanctions as it or the FAA may determine to be appropriate, including, but not limited to:
  - i. Withholding of payments to the CONSULTANT under the Agreement until the CONSULTANT complies, and/or
  - ii. Cancellation, termination, or suspension of the Agreement, in whole or in part.
- f. Incorporation of Provisions. The CONSULTANT shall include the provisions of paragraphs 1 through 5 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The CONSULTANT shall take such action with respect to any subcontract or procurement as the CITY or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event CONSULTANT becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the CONSULTANT may request the CITY to enter into such litigation to protect the interests of the CITY and, in addition, the CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.

**B. Airport and Runway Improvement Act of 1982, Section 520 – General Civil Rights Provisions**

- a. The CONSULTANT assures that it will comply with pertinent statutes, Executive orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision obligates the tenant/concessionaire/lessee or its transferee for the period

during which Federal assistance is extended to the airport a program, except where Federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases the provision obligates the party or any transferee for the longer of the following periods: (a) the period during which the property is used by the airport CITY or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits or (b) the period during which the airport CITY or any transferee retains ownership or possession of the property. In the case of the CONSULTANT, this provision binds the CONSULTANT from the bid solicitation period through the completion of the Agreement. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

- C. All rights to inventions and materials generated under this Agreement are subject to regulations issued by the FAA and the CITY of the Federal grant under which this Agreement is executed pursuant to 49 CFR Part 18.36(i)(8), FAA Order 5100.38, and any other applicable law.

D. **Trade Restriction**

The CONSULTANT or subcontractor, by submission of an offer and/or execution of a Agreement, certifies that it:

- a. is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative (USTR);
- b. has not knowingly entered into any Agreement or subcontract for this project with a person that is a citizen or national of a foreign country on said list, or is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on said list;
- c. has not procured any product nor subcontracted for the supply of any product for use on the project that is produced in a foreign country on said list.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no Agreement shall be awarded to CONSULTANT or subcontractor who is unable to certify to the above. If the CONSULTANT knowingly procures or subcontracts for the supply of any product or service of a foreign country on said list for use on the project, the Federal Aviation Administration may direct through the CITY cancellation of the Agreement at no cost to the Government.

Further, the CONSULTANT agrees that, if awarded a Agreement resulting from this solicitation, it will incorporate this provision for certification without modification in each Agreement and in all lower tier subcontracts. The CONSULTANT may rely on the certification of a prospective subcontractor unless it has knowledge that the certification is erroneous.

The CONSULTANT shall provide immediate written notice to the CITY if the CONSULTANT learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The subcontractor agrees to provide written notice to the CONSULTANT if at any time it learns that its certification was erroneous by reason of changed circumstances.



This certification is a material representation of fact upon which reliance was placed when making the award. If it is later determined that the CONSULTANT or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration may direct through the CITY cancellation of the Agreement or subcontract for default at no cost to the Government.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of CONSULTANT is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

For breach or violation of any of CONSULTANT's warranty or these compliance requirements, CITY shall have the right in its discretion; to terminate the Agreement without liability; to pay only for the value of the work actually performed; or to deduct from the Agreement price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

#### **Article XXXV – GENERAL PROVISIONS**

- A. Cooperation. In the event any claim or action is brought against CITY relating to CONSULTANT's performance or services rendered under this Agreement, CONSULTANT shall render any reasonable assistance and cooperation which CITY might require.
- B. Ownership of Documents. All findings, reports, documents, information and data including, but not limited to, computer tapes or discs, files and tapes furnished or prepared by CONSULTANT or any of its subcontractors in the course of performance of this Agreement, shall be and remain the sole property of CITY. CONSULTANT agrees that any such documents or information shall not be made available to any individual or organization without the prior consent of CITY. Any use of such documents for other projects not contemplated by this Agreement, and any use of incomplete documents, shall be at the sole risk of CITY and without liability or legal exposure to CONSULTANT. CITY shall indemnify and hold harmless CONSULTANT from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from CITY's use of such documents for other projects not contemplated by this Agreement or use of incomplete documents furnished by CONSULTANT. CONSULTANT shall deliver to CITY any findings, reports, documents, information, data, in any form, including but not limited to, computer tapes, discs, files audio tapes or any other Project related items as requested by CITY or its authorized representative, at no additional cost to the CITY.
- C. Public Records Act Disclosure: CONSULTANT has been advised and is aware that all reports, documents, information and data including, but not limited to, computer tapes, discs or files furnished or prepared by CONSULTANT, or any of its subcontractors, and provided to CITY may be subject to public disclosure as required by the California Public Records Act (California Government Code Section 6250 et. seq.). Exceptions to public disclosure may be those documents or information that qualify as trade secrets, as that term is defined in the California Government Code Section 6254.7, and of which CONSULTANT informs CITY of such trade secret. The CITY will endeavor to maintain as confidential all information obtained by it that is designated as a trade secret. The CITY shall not, in any way, be liable or responsible for the

disclosure of any trade secret including, without limitation, those records so marked if disclosure is deemed to be required by law or by order of the Court.

- D. Responsibility for Errors. CONSULTANT shall be responsible for its work and results under this Agreement. CONSULTANT, when requested, shall furnish clarification and/or explanation as may be required by the CITY's representative, regarding any services rendered under this Agreement at no additional cost to CITY. In the event that an error or omission attributable to CONSULTANT occurs, then CONSULTANT shall, at no cost to CITY, provide all necessary design drawings, estimates and other CONSULTANT professional services necessary to rectify and correct the matter to the sole satisfaction of CITY and to participate in any meeting required with regard to the correction.
- E. Prohibited Employment. CONSULTANT will not employ any regular employee of CITY while this Agreement is in effect.
- F. Order of Precedence. In the event of an inconsistency in this Agreement and any of the attached Exhibits, the terms set forth in this Agreement shall prevail. If, and to the extent this Agreement incorporates by reference any provision of any document, such provision shall be deemed a part of this Agreement. Nevertheless, if there is any conflict among the terms and conditions of this Agreement and those of any such provision or provisions so incorporated by reference, this Agreement shall govern over the document referenced.
- G. Costs. Each party shall bear its own costs and fees incurred in the preparation and negotiation of this Agreement and in the performance of its obligations hereunder except as expressly provided herein.
- H. No Third Party Beneficiary Rights. This Agreement is entered into for the sole benefit of CITY and CONSULTANT and no other parties are intended to be direct or incidental beneficiaries of this Agreement and no third party shall have any right in, under or to this Agreement.
- I. Headings. Paragraphs and subparagraph headings contained in this Agreement are included solely for convenience and are not intended to modify, explain or to be a full or accurate description of the content thereof and shall not in any way affect the meaning or interpretation of this Agreement.
- J. Construction. The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the parties and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.
- K. Waiver. The delay or failure of either party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.
- L. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the

validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance. Notwithstanding the foregoing, if the value of this Agreement, based upon the substantial benefit of the bargain for any party, is materially impaired, which determination made by the presiding court or arbitrator of competent jurisdiction shall be binding, then both parties agree to substitute such provision(s) through good faith negotiations.

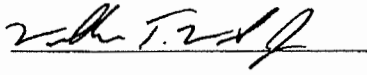
- M. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement.
- N. Agreement. The two parties to this agreement, who are the before named CONSULTANT and the before named CITY, hereby agree that this agreement constitutes the entire agreement which is made and concluded in duplicate between the two parties. Both of these parties for and in consideration of the payments to made, conditions mentioned, and work to be performed; each agree to diligently perform in accordance with the terms and conditions of this agreement.
- O. Corporate Authority. The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by doing so the parties hereto are formally bound to the provisions of this Agreement.

[Signature on the following page]

ARTICLE XXXIII - SIGNATURES

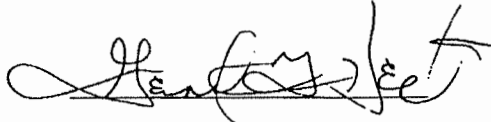
City of California City

CONSULTANT



WILLIAM T. WEIL, JR.  
Print Name, Title CITY MANAGER

DATE: 6-4-2013



GERARD F. HART  
Print Name, Title

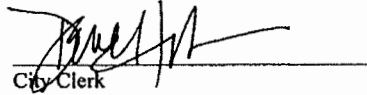
DATE: 6-4-2013

APPROVED AS TO FORM:



City Attorney

ATTEST:



City Clerk

**HELT ENGINEERING, INC.**

EFFECTIVE – JANUARY 2013

2930 UNION AVE.

BAKERSFIELD, CA 93305

(661)323-6045

FAX (661)323-0799

Page 1 of 1

**FEE SCHEDULE****PERSONNEL****RATE/HR.**

PROFESSIONAL ENGINEER, LAND SURVEYOR, ARCHITECT .....	\$ 125.00
SENIOR PROJECT MANAGER .....	\$ 120.00
PROJECT MANAGER .....	\$ 115.00
ASSISTANT PROJECT MANAGER .....	\$ 95.00

**\* FIELD WORK – PREVAILING WAGE REQUIREMENTS**

CHIEF OF PARTY .....	\$ 135.00
CONSTRUCTION MANAGEMENT .....	\$ 135.00
INSTRUMENT MAN .....	\$ 125.00

**ADDITIONAL**

EXPENSES FOR WORK OUT OF TOWN .....	NO MARKUP.. ACTUAL COST
AERIAL PROJECTS (HORIZONTAL/VERTICAL) .....	QUOTE PER JOB
MATERIALS, REPRODUCTIONS, BLUEPRINTS, EXPRESS MAIL .....	..... ACTUAL COST/NO MARKUP

**FREE SERVICES**

FIELD LASER EQUIPMENT/TRIMBLE TOTAL STATION (GPS) & DATA COLLECTION COMPUTERS .....	NO CHARGE
IN-HOUSE COMPUTERS AND PLOTTERS .....	NO CHARGE
(MS-WINDOWS BASED SYSTEMS WITH ACAD, COGO, ASG, EARTHWORKS, DESIGN, DIGITAL TERRAIN MODELING, ETC.)	

\* Senate Bill #1999 requiring prevailing wage for public works projects funded with public funds.

\* Any personnel performing field work will be billed at field work rate.

NOTE: These fees subject to 30% surcharge for any work performed during overtime hours.

AGREEMENT ADDENDUM

Addendum to provide contract services for Engineering Services by Helt Engineering Inc, dated April 17th, 2013.

This Addendum amends Article IV A. Performance Period, of the original Consultant Engineer Services agreement, dated April 17<sup>th</sup>, 2013, to reflect the 18 month extension for a term not to exceed five years, which will extend the services of Engineering Services provided by Helt Engineering, Inc. through March 31, 2018.

No other changes to the original agreement are intended.

Signed: \_\_\_\_\_  
Jerry Helt  
Owner, Helt Engineering Inc.

Date: \_\_\_\_\_

Signed: \_\_\_\_\_  
Tom Weil  
City Manager  
City of California City

Date: \_\_\_\_\_

Attest By: \_\_\_\_\_  
City Clerk

Date: \_\_\_\_\_

Approved as to Form: \_\_\_\_\_  
City Attorney

Date: \_\_\_\_\_

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Exhibit 10-A A&E Consultant Audit Request Letter And Checklist

Exhibit 10-B Suggested Consultant Evaluation Sheet

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Exhibit 10-D Consultant Contract Outline (deleted w/this LPP 14-02)

Exhibit 10-E Sample Payment Clauses (deleted w/this LPP 14-02)

Exhibit 10-F Certification of Consultant, Commission & Fees (deleted w/this LPP 14-02)

Exhibit 10-G Certification of Local Agency (deleted w/LPP 13-01)

Exhibit 10-H Sample Cost Proposal (Example #1 thru #3)

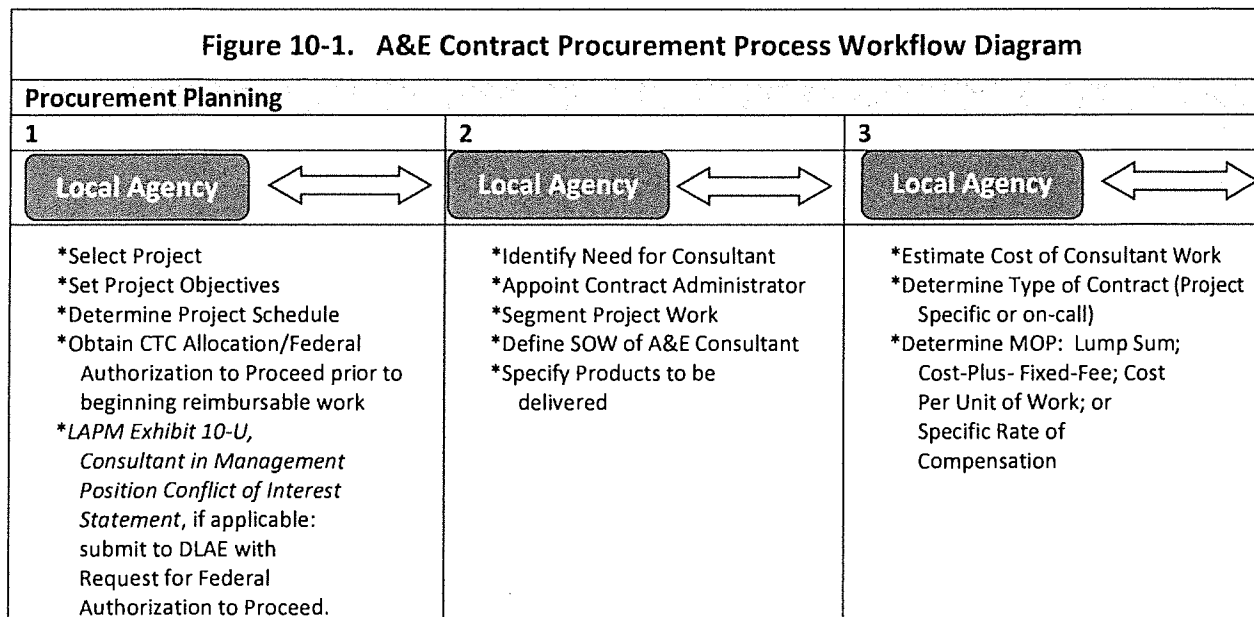
Exhibit 10-I Notice to Proposers DBE Information

Exhibit 10-J Standard Contract Provisions for Sub Consultant/DBE PARTICIPATION (deleted w/this LPP 14-02)

Exhibit 10-K Consultant Certification of Contract Costs and Financial Management System




- Exhibit 10-L Local Agency Certification of Cost Analysis (deleted w/this LPP 14-02)
- Exhibit 10-M Standard Audit Program Procedures (deleted w/LPP 12-03)
- Exhibit 10-N Accounting & Auditing Guidelines for Contracts with Caltrans (deleted w/LPP 12-03)
- Exhibit 10-O1 Consultant Proposal DBE Commitment
- Exhibit 10-O2 Consultant Contract DBE Information
- Exhibit 10-P Non-Lobbying Certification for Federal Aid Contracts (deleted w/this LPP 14-02)
- Exhibit 10-Q Disclosure of Lobbying Activities
- Exhibit 10-R A&E Sample Contract Language
- Exhibit 10-S Consultant Performance Evaluation
- Exhibit 10-T Panel Member Conflict of Interest & Confidentiality Statement
- Exhibit 10-U Consultant in Management Position Conflict of Interest & Confidentiality Statement
- Exhibit 10-V Non Discrimination Clause (deleted w/this LPP 14-02)

**NOTE:** Unless stated otherwise, all references to Exhibits in this Chapter refer to the Local Assistance Procedures Manual (LAPM) Exhibits located at: <http://www.dot.ca.gov/hq/LocalPrograms/lam/forms/lapmforms.htm>

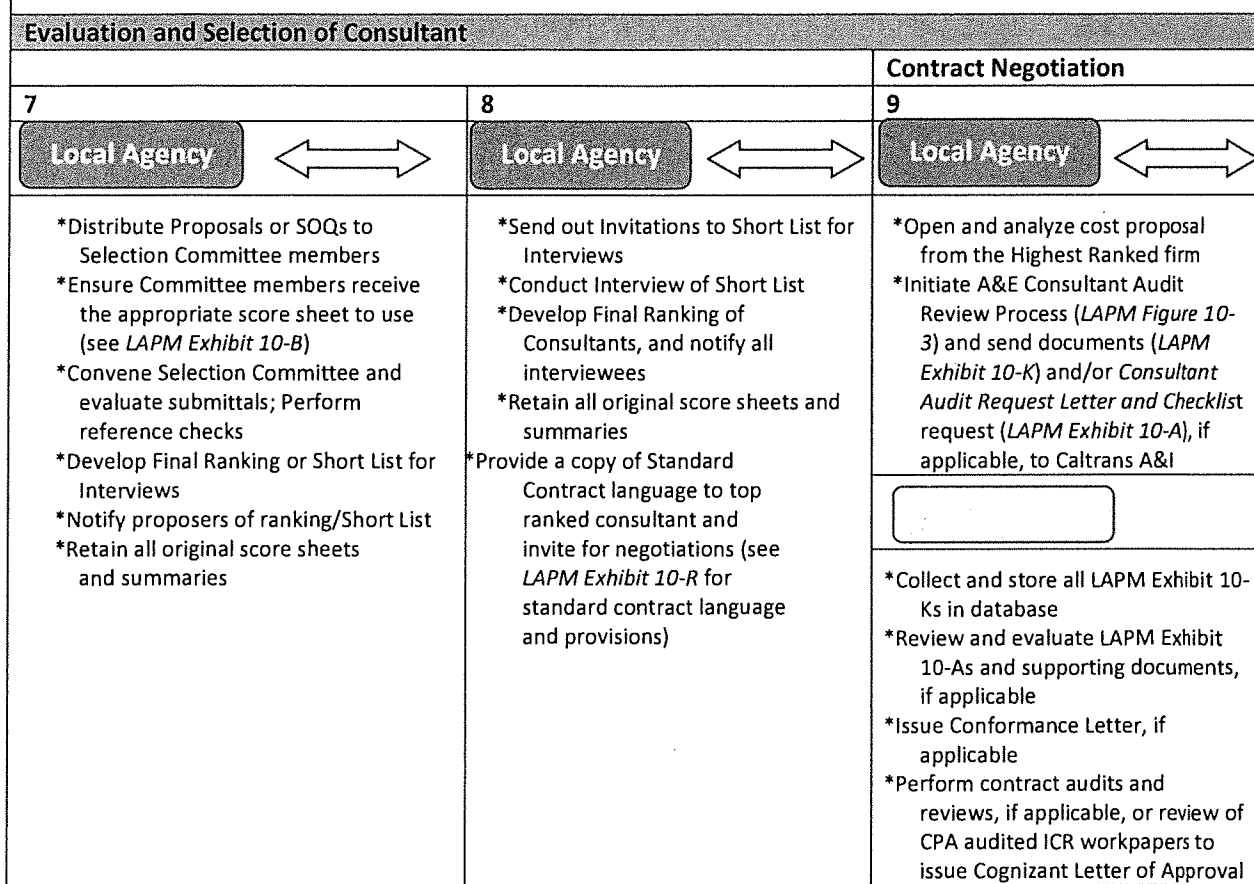


A&E = Architectural and Engineering  
 A&I = Caltrans Audits and Investigations  
 CT = Caltrans  
 DBE = Disadvantaged Business Enterprise  
 DLA = Division of Local Assistance  
 DLAE = District Local Assistance Engineer  
 LAPG = Local Assistance Program Guidelines  
 LAPM = Local Assistance Procedures Manual  
 MOP = Method of Payment  
 RFP = Request for Proposal  
 RFQ = Request for Qualifications  
 SOQ = Statement of Qualifications  
 SOW = Statement/Scope of Work

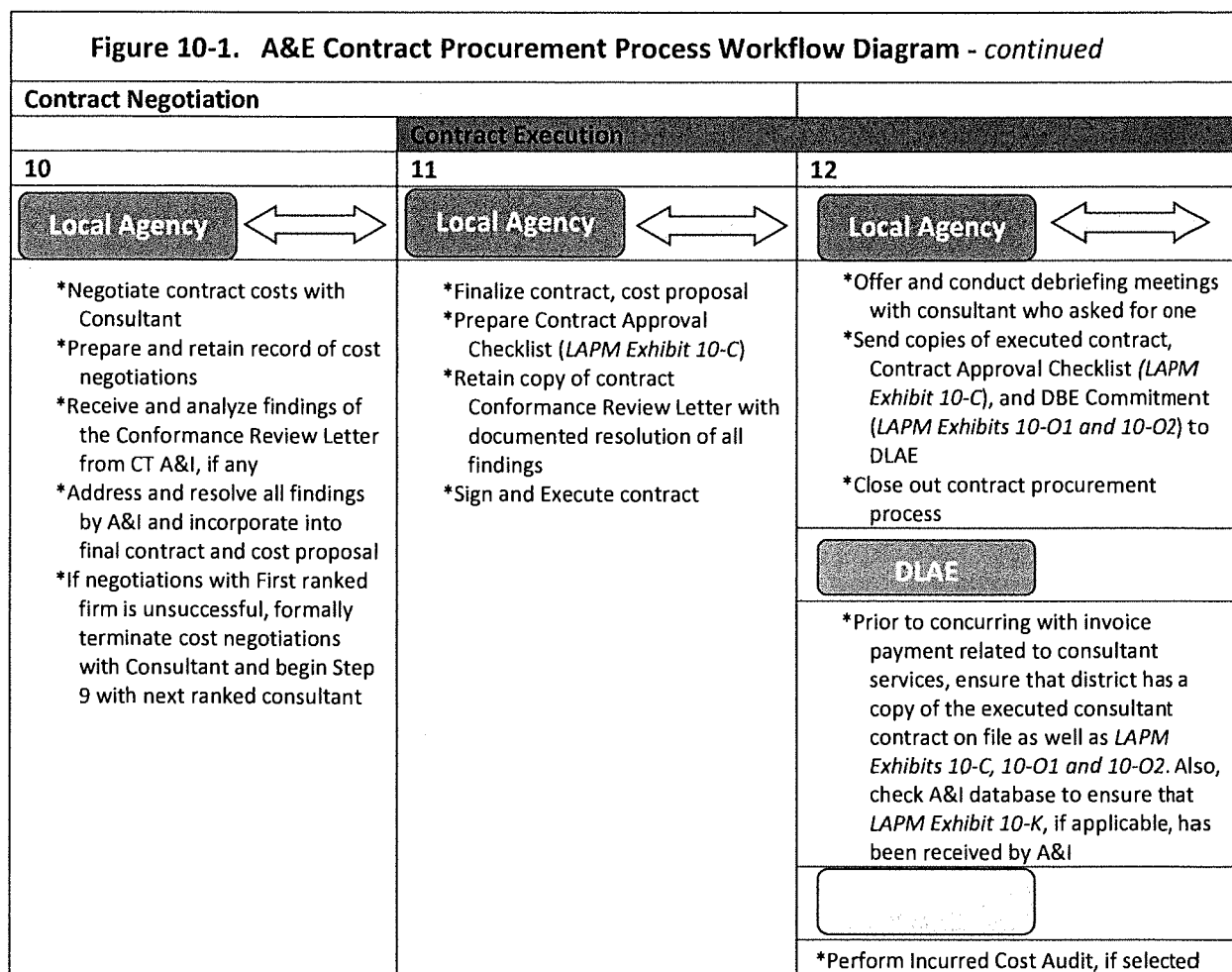
**Figure 10-1. A&E Contract Procurement Process Workflow Diagram - *continued***

Solicitation Documents and Advertisement		
4	5	6
		
<ul style="list-style-type: none"> <li>*Determine Solicitation Document; RFP or RFQ</li> <li>*Appoint Consultant Selection Committee</li> <li>*Collect signed Conflict of Interest and Confidentiality Statements (<i>see LAPM Exhibit 10-T</i>), from all committee members</li> <li>*Determine Procurement Schedule</li> <li>*Develop Technical Criteria with level of importance (weights) for Evaluation of Proposals or the SOQ</li> </ul>	<ul style="list-style-type: none"> <li>*Prepare RFP or RFQ documents</li> <li>*Includes SOW, evaluation process/criteria, DBE goals, MOP and cost proposal format (<i>see LAPM Exhibit 10-H</i>), minimum requirement of Proposal or SOQ, Notice to Proposers DBE Information (<i>see LAPM Exhibit 10-I</i>), submittal deadline</li> <li>*Advertise RFP or RFQ; newspaper, technical publications, Web Hosting Site, other local websites</li> <li>*Issue RFP or RFQ; direct mailing, web posting</li> </ul>	<ul style="list-style-type: none"> <li>*Prepare to respond to RFP/RFQ questions</li> <li>*Conduct Proposers Conference, if applicable</li> <li>*Receive Proposals or SOQs</li> </ul>

A&E = Architectural and Engineering  
 A&I = Caltrans Audits and Investigations  
 CT = Caltrans  
 DBE = Disadvantaged Business Enterprise  
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**Figure 10-1. A&E Contract Procurement Process Workflow Diagram - continued**

A&E = Architectural and Engineering  
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**Figure 10-1. A&E Contract Procurement Process Workflow Diagram - continued**

A&E = Architectural and Engineering  
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 SOW = Statement/Scope of Work



## Chapter 10 Consultant Selection

### 10.1 GENERAL

#### Introduction

A local agency may engage consultants to perform architectural, engineering, and related services needed to develop a federal-aid or state funded project. Those private consulting firms providing architectural, landscape architectural, engineering, environmental, land surveying, construction engineering, or construction project management services, with respect to a construction project, are termed "Architectural and Engineering (A&E) Consultants." Local agencies requesting federal or state funds to reimburse A&E Consultants must follow the selection and contracting procedures detailed in this chapter.

#### Architectural and Engineering Consultants

The provisions of the Brooks Act (40 USC, Section 1104) require local agencies to award federally funded engineering and design related contracts on the basis of fair and open competitive negotiations, demonstrated competence, and professional qualifications (23 Code of Federal Regulations (CFR), Part 172), at a fair and reasonable price (48 CFR 31.201-3).

Cost proposals submitted to the local agency, if above the small purchase procurement threshold, must be sealed and may not be included as a criterion for rating such consultants. After ranking, cost negotiations may begin with the most qualified consultant and only their cost proposal will be opened. Should negotiations fail or result in a price that the local agency does not consider fair and reasonable, negotiations must be formally terminated and the local agency must then undertake negotiations with the second most qualified consultant.

If the negotiations with the second most qualified firm are not successful, negotiations must be formally terminated and the local agency must then undertake negotiations with the third most qualified consultant, and so on, until the price is determined to be fair and reasonable by the local agency.

In selecting an A&E consultant, a detailed technical proposal or qualifications proposal, and a proposed contract will be required.

Depending upon the scope of work, the required contract provisions may need to include the California State Prevailing Wages (Federal "Payment of Predetermined Minimum Wage" applies only to federal-aid construction contracts). Prevailing wages will apply if the services to be performed will involve land surveying (such as flag persons, survey party chief, rodman or chainman), materials sampling and testing (such as drilling rig operators, pile driving, crane operators), inspection work, soils or foundation investigations, environmental hazardous materials and so forth. California State Prevailing Wage information is available through the California Department of Industrial Relations websites below.

- DIR FAQ website: [http://www.dir.ca.gov/OPRL/FAQ\\_PrevailingWage.html](http://www.dir.ca.gov/OPRL/FAQ_PrevailingWage.html)

- DIR Wage Determination website: <http://www.dir.ca.gov/oprl/DPreWageDetermination.htm>

### Non A&E Consultants

Consultants other than A&E consultants may be selected using cost, cost and qualifications (best value) or other critical selection criteria. The procedures outlined in this chapter can be modified for selecting non-A&E consultants by adding a cost item to the contract proposal. The Brooks Act and the audit and review process described in Section 10.3 “*A&E Consultant Audit and Review Process*” of this chapter are optional for non A&E Consultant contracts.

Non-A&E contract procurement on highway projects must comply with California State Public Contract Code, Section 10351-10381,

### Selecting the Project

The local agency is responsible for selecting and initiating a federal-aid or state financed transportation project. The decision to begin project development is influenced by the project needs, its acceptability, the timing of studies, financing, and construction. The local agency must identify the project's objectives including the general level of improvement or service, operating standards, maximum cost and the target date for project completion before commencing any consultant selection process.

### Subcontracted Services

The consultant is responsible for performing the work required under the contract in a manner acceptable to the local agency. The consultant's organization and all associated consultants and subconsultants must be identified at the time of the proposal. If the consultant wishes to use a subconsultant not specified in the proposal, prior written approval must be obtained from the local agency. The subcontract must contain all required provisions of the prime contract.

### Organizational and Consultant Conflicts of Interest

In the procurement of contracts for engineering services by private consulting firms using federal-aid highway or state funds, local agencies must take all the steps necessary to prevent fraud, waste and abuse. The local agency must develop and maintain a written code of conduct governing the performance of its employees engaged in the award and administration of federal-aid highway funded contracts, including the prevention of conflicts of interest.

A conflict of interest occurs when a public official's private interests and his or her public duties and responsibilities diverge or are not consistent. Conflicts of interest may be direct or indirect (e.g., as result of a personal or business relationship). Additionally, the appearance of a conflict of interest should be avoided as an apparent conflict may undermine public trust if not sufficiently mitigated.

### Federal regulation governing conflict of interest (23 CFR 1.33) requires that:

- No contracting agency employee who participates in the procurement, management, or administration of federal or state funded contracts or subcontracts shall have, directly or indirectly, any financial or other personal interest in connection with such contract or subcontract;

- No person or entity performing services for a contracting agency in connection with a federal or state funded project shall have, directly or indirectly, any financial or other personal interest, other than employment or retention by the contracting agency, in any contract or subcontract in connection with such project;
- No person or entity performing services for a contracting agency in connection with a federal-aid highway project funded project shall have, directly or indirectly, any financial or other personal interest in any real property acquired for the project.

### **Consultants performing work on multiple phases of federal-aid projects**

Local agencies sometimes wish to hire the same consultant firm to perform construction engineering and/or inspection services on the same project on which the firm also performed design services. This can result in project delivery efficiencies, as the design firm is well-suited to verify that the project is being constructed in accordance with the design and can resolve issues related to the design on behalf of the contracting agency. However, this may also pose a potential conflict of interest if the firm has a vested financial interest in failing to disclose deficiencies in its design work product and seeks to insulate itself from pecuniary liability in subsequent phases of the project, such as minimizing or ignoring design errors and omissions, rather than serving the best interests of the contracting agency and the public. Procuring a different firm from the design firm to provide the necessary construction engineering and/or inspection services provides another level of review and reduces the risk of, or potential for, a conflict of interest.

Although federal regulations do not expressly prohibit the same firm from providing services on subsequent phases, the local agencies are responsible for ensuring the public interest is maintained throughout the life of a project and that a conflict of interest, direct or indirect, does not occur or is sufficiently mitigated by appropriate public agency controls. Prior to allowing a consulting firm to provide services on subsequent phases of the same project, the contracting agency must establish appropriate compensating controls in the form of policies, procedures, practices, and other safeguards to ensure a conflict of interest does not occur in the procurement, management, and administration of consultant services.

When design and construction phase services are procured under a single solicitation, the selection of the consulting firm must be based on the overall qualifications to provide both design and construction phase services, which require different skill sets, experience, and resources. Procuring these services under different solicitations may result in selection of a more qualified firm to perform services in each phase, as the most qualified firm to perform design phase services may not be the most qualified firm to provide construction phase services. Similarly, the qualifications and capacity of a firm may change over time. As such, it may not be appropriate to contract with a consulting firm to provide construction phase services at the outset of a design phase, knowing that these services may not be needed for an extended period of time until the preconstruction phase of the project is complete and construction funding authorized.

The contract with a consulting firm providing design phase services on a project may not be amended to include construction phase services unless the desired construction phase services were included within the original advertised scope of services and evaluation criteria of the solicitation from which a qualifications based selection was conducted.

All consultants acting in a management role must complete Exhibit 10-U Consultant in Management Position Conflict of Interest and Confidentiality Statement and retain it in the local agency files.

### **Authorization to Proceed**

The Federal Highway Administration (FHWA) must give the local agency an Authorization to Proceed with the work prior to the performance of any work for which federal reimbursement is to be requested, (see Chapter 3 “Project Authorization”). For state funded projects, see Chapter 23 “Local Agency State Transportation Improvement Program Projects”, of the Local Assistance Program Guidelines (LAPG) for guidance as to when work may proceed.

Copies of the *Authorization to Proceed* and the consultant contract must be retained in the local agency project files for future audit purposes.

## **10.2 IDENTIFYING & DEFINING A NEED FOR CONSULTANTS**

The need for a consultant is identified by comparing the project’s schedule and objectives with the local agency’s capabilities, its staff availability of the required expertise, and its funding resources. If the local agency does not have sufficient staff capabilities, it may choose to solicit assistance from another agency, or use a qualified private consultant to perform the required work.

If the local agency determines that there is a need to solicit assistance from another local agency, or to use a consultant, the District Local Assistance Engineer (DLAE) should be notified if federal-aid or state funds are to be requested for the project segment to be contracted out.

### **Appointing the Contract Administrator**

The Contract Administrator is responsible for ensuring the quality of consultant contract products or services. The Contract Administrator is appointed as soon as the need for consultant services is identified. The Contract Administrator is involved throughout the development of the selection process and the contract provisions, and in the administration of the consultant’s work. The Contract Administrator must be a qualified local agency employee, or have staff that is qualified to ensure the consultant’s work is complete, accurate, and consistent with the terms and conditions of the consultant contract. On federal-aid contracts, the Contract Administrator or staff members must be a full time employee and familiar with the work to be contracted out and the standards to be used. The Contract Administrator must also abide by the laws, regulations and policies required as part of accepting federal or state funding for their project. Non-compliance with the laws, regulations, and policies may result in loss of project funding.

The Contract Administrator’s duties include, but are not limited to the following:

- Ensures that all records, files and other documents related to contract procurement and management activities are retained in contract/project files;
- Provides direction to ensure the proposed work is advertised properly;
- Prepares and distributes the Request for Qualifications (RFQ), description of work, and Request for Proposals (RFP), if used;
- Prepares the draft contract;

- Arranges for preparation in advance of an independent estimate of the value of the work to be contracted out;
- Ensures that the selection procedures are followed;
- Analyzes the selected/best-qualified consultant's cost proposal;
- Ensures contract audit and review procedure is followed;
- Ensures that fee/profit negotiation is conducted and keeps records
- Serves as the local agency's primary contact person for the successful consultant;
- Monitors the consultant's progress and provides direction;
- Reviews and approves the consultant's invoices and/or progress payments to ensure that billings are in accordance with the terms and conditions of the contract, and correspond accurately to the work performed during the billing period;
- Identifies other local agency staff for the consultant to contact, if needed;
- Closes out the contract at completion, by processing the final invoice; completing a mandatory consultant evaluation, and final DBE utilization reports (Exhibit 17-F).

### Determining the Project Schedule

The local agency develops a schedule for performance of work and completion of the project. The schedule must include sufficient time to allow for:

- Selecting the consultant;
- Developing the consultant contract;
- Completing the A&E consultant contract audit process;
- Conducting meetings and project reviews.

### Segmenting Consultant Work

Consultant services are most effective when consultant work is segmented appropriately. The extent of segmenting depends upon the type and complexity of the work. Combining preliminary engineering tasks with the preparation of the required environmental analysis is normally desirable. Preparing an Environmental Assessment (EA) or Environmental Impact Statement (EIS) is more than simply writing a report. Assessment and impact reports include preliminary engineering needed to analyze project alternatives and produce an engineering and planning assessment. Initial project studies include only as much traffic and engineering analysis of alternatives, as is needed to produce a sound EA or EIS (see Chapter 6 "*Environmental Procedures*" and Chapters 31 and 32 of the *Standard Environmental Reference [SER]*). Final detailed design shall not begin until environmental clearance has been received if federal reimbursement is desired.

Refer to Figure 10-2 "*Segmenting Consultant Work*" in this chapter, which illustrates several satisfactory ways to segment consultant activities.

**Figure 10-2 Segmenting Consultant Work**

	Well-structured Projects With Simple Right of Way Requirements	Well-structured Projects With Complex Right of Way Requirements	More Difficult Projects	Very Complex Projects
Preliminary Engineering				
Environmental Analysis				
Plans, Specifications & Estimates				
Right of Way Activities				
Utility Relocation				
Construction Engineering				

**Specify Products to be Delivered**

The Contract Administrator identifies the products and services to be delivered as a result of consultant contract work, and minimum qualification of consultant professionals and staff. These vary depending upon the type of projects and the phase of project development being addressed.

**Scope of Consultant Work**

The scope of work, which the contract must include, is a detailed description of the products or services the consultant is to provide. From a detailed scope of work, consultants respond to a project advertisement; determine personnel and time requirements; and develop a technical proposal. Therefore, the scope of work must be clear, concise, complete, and describe the deliverables, standards for design and other work, quality control measures, acceptance criteria and deadlines.

**Non-Discrimination Clause**

The Non-Discrimination Clause (Exhibit 10-R A&E Sample Contract Language, Article XVI Statement of Compliance) must be included in each consultant contract. The consultant must include the nondiscrimination and compliance provisions of the Non-Discrimination Clause in all subcontracts to perform work under the contract.

**Disadvantaged Business Enterprise (DBE) Participation**

When administering federal-aid projects, federal regulations (49 CFR, Part 26) require a local agency to comply with the DBE program, and take necessary steps to ensure that DBE firms have the opportunity to participate in the projects. Such steps include the setting of goals to ensure DBE firms are considered by the proposing consultants and, when feasible, organizing the project schedule and task requirements to encourage participation in the contract by DBE firms. Local agencies should be fully

aware of all of the subcontracting opportunities in their consultant contracts. For detailed information and requirement on the DBE Program, see Chapter 9 "*Civil Rights and Disadvantaged Business Enterprises.*"

The consultant must ensure that certified DBE firms have the opportunity to participate in the performance of the contract and must take all necessary and reasonable steps to facilitate participation by DBE firms for such assurance.

A DBE goal must be established by the local agency for each contract if there are subcontracting opportunities and available DBE firms. Exhibit 10-I Notice to Proposers DBE Information must be included in the RFQ or RFP if the proposed contract will include federal-aid funds. The consultant must meet the goal by using DBEs, or if not able to meet the DBE goal, document that a good faith effort was made to meet the contract goal. Good faith efforts must be documented by the consultant and approved by the local agency (see Exhibit 15-H DBE Information-Good Faith Efforts). If the consultant's documented good faith efforts are found to be inadequate by the local agency, the consultant must be offered an opportunity for reconsideration.

If a DBE subconsultant is unable to perform its subcontracted services and the goal is not otherwise met, the consultant must make a good faith effort to replace it with another DBE subconsultant to the extent needed to meet the DBE goal. For more detailed information see Exhibit 10-I Notice to Proposers DBE Information.

A contract provision for DBE Participation must be included in all consultant contracts with federal-aid funds. For sample contract clauses with and without specified DBE goals see Exhibit 10-R A&E Sample Contract Language, Article XX Disadvantaged Business Enterprise (DBE) Participation.

## **Reporting DBE Commitments and DBE Information**

### **For Contracts with DBE Goals**

If the local agency has set a DBE goal, Exhibit 10-O1 Consultant Proposal DBE Commitment must be included in the proposal package provided to the local agency by each (prime consultant) proposer. The purpose of Exhibit 10-O1 Consultant Proposal DBE Commitment is to demonstrate the proposer's commitment to meet the DBE goal set by the local agency.

Exhibit 10-O2 Consultant Contract DBE Information, must be completed at the conclusion of cost negotiations, incorporated into the final agreement and a copy sent the DLAE. The purpose of this form is to capture DBE participation in accordance with 49 CFR, Part 26. This form must include the names, addresses, and phone numbers of DBE firms that will participate with a complete description of work or supplies to be provided by each, and the dollar value of each DBE transaction. When 100 percent of a subcontracted item of work is not to be performed or furnished by the DBE firm, a description of the exact portion of work to be performed or furnished by that DBE must be included in the DBE commitment, including the planned location of that work. A proposer certified as a DBE firm must describe the work it has committed to be performed with its own forces, as well as any other work that it has committed to be performed by the DBE subconsultant, suppliers, and trucking companies.

The winning proposer must provide written confirmation from each DBE firm participating in the contract. A copy of a DBE's quote will serve as written confirmation that the DBE is participating in the contract. If a DBE is participating as a joint venture partner, the proposer must submit a copy of the joint venture agreement.

#### **For Contracts with No DBE Goals**

For contracts with no DBE contract goal, Exhibit 10-O1 Consultant Proposal DBE Commitment is not necessary and only Exhibit 10-O2 Consultant Contract DBE Information must be included in the award package and provided by the winning proposer.

#### **Reporting DBE Final Utilization (Contracts with or without Goals)**

Upon completion of the contract a summary of the DBE final utilization must be prepared, certified correct, and submitted on Exhibit 17-F Final Report-Utilization of Disadvantaged Business Enterprise (DBE), First-Tier Subconsultant or equivalent to the local agency showing total dollars paid to each subconsultant and supplier. Exhibit 17-F is reviewed by the local agency and certified as complete and accurate.

The local agency must send the original, plus one copy of the completed Exhibit 17-F with the final invoice to the DLAE within thirty (30) days after completion of the contract.

#### **Estimated Cost of Consultant Work**

An independent estimate for cost or price analysis is needed for all consultant contracts (49 CFR 18.36(f)) to ensure that consultant services are obtained at a fair and reasonable price. The estimate is prepared in advance of requesting a cost proposal from the top-ranked consultant, so the local agency's negotiating team has a cost analysis of the project to evaluate the reasonableness of the consultant's cost proposal. The estimate, which is specifically for the use of the local agency's negotiating team, is to be kept confidential and maintained for records.

A good cost estimate can be prepared only if the scope of work is defined clearly. The scope of work must include a list of the products or services which the consultant is required to deliver, and a time schedule of when they must be delivered.

It should be stressed that all work to be derived from the consultant services, such as preliminary design, environmental or final design, must be clearly identified in the solicitation of consultant services (RFQ or RFP) and included in the cost estimate. The addition of work to the original scope by amendment should be avoided whenever possible.

Some of the costs estimating techniques are:

#### **Analogous Estimating**

Analogous cost estimating is using the actual cost of a previous, similar contract as the basis for estimating the cost of the current contract. Analogous cost estimating is frequently used to estimate costs when there is a limited amount of detailed information about the project. Analogous cost estimating is generally less accurate and it is most reliable when previous projects are similar in fact, and not just in appearance, and it uses expert judgment.



**Parametric Estimating**

Parametric estimating is a technique that uses statistical relationship between historical data and other variables to calculate a cost estimate for an activity resource. This technique can produce a higher level of accuracy depending upon the sophistication, as well as underlying resource quantity and the cost data. A cost example would involve multiplying the planned quantity of work by the historical cost per unit to obtain the estimated cost of the contract.

**Bottom-up Estimating**

This technique involves estimating the cost for individual work in the contract with the lowest level of detail. This detailed cost is then summarized or “rolled up” to determine a total cost of contract. Cost detail should include estimated hours per task, labor hourly cost for professional and non-professional classifications, subconsultant costs, other project direct costs, and profit. Labor costs should be broken down to direct labor and indirect cost rates, if possible.

If more than one project or phase of work is to be developed within the consultant contract, separate cost estimates are required for each project or phase of work. Separate cost estimates are required for each milestone and portion of the work expected to be subcontracted.

For on-call (as-needed) contracts, the cost estimate/analysis should include at minimum, a historical analysis of annual needs for consultant work, professional labor cost and market analysis, and reasonable profit analysis.

**Determine Type of Contract**

Types of contracts to be used are described as follows:

- Project-specific contract is between the local agency and consultant for the performance of services and a defined scope of work related to a specific project or projects.
- Multi-purpose or Multi-phased contract is a project-specific contract where the defined scope of work is divided into phases which may be negotiated and executed individually as the project progresses.
- On-call contract is a contract for a number of projects, under which task or work orders are issued on an as-needed basis, for an established contract period. On-call contracts are typically used when a specialized service of indefinite delivery or indefinite quantity are needed for a number of different projects, such as construction engineering, design, environmental analysis, traffic studies, geotechnical studies, and field surveying, etc. Many agencies use these contracts to address peaks in workload of in-house engineering staff and/or to perform a specialized service which the agency does not have. On-call contracts shall specify a reasonable maximum length of contract, not to exceed 5 years, and a maximum total contract dollar amount (23 CFR 172).
- To maintain the intent of the Brooks Act (40 USC 1101-1104) in promoting open competition and selection based on demonstrated competence and qualifications, on-call consultant contracts established through the RFQ process must meet the following requirements:
- Must define a general scope of work, complexity, and professional nature of services.

- Specify a “task order” procedure the local agency uses to procure project specific work under the contract.
- No task order is valid unless the on-call contract is still enforced. For example, if the on call contract is expired, all task orders will become invalid.
- If multiple consultants are to be selected and multiple on-call contracts awarded through a single solicitation for specific services:
  - Identify the number of consultants that may be selected or contracts that may be awarded.
- Specify procedures in the contracts the local agency will use to award/execute task orders among the consultants:
- Either through an additional qualification-based selection process (see the Two-Step RFQ/RFQ process later in this chapter), OR
  - On regional basis whereby the region is divided into areas identified in the solicitation, and consultants are selected to provide on-call services for assigned areas only.

### **Determine Method of Payment**

The method of payment of contract must be specified. Four methods are permitted depending on the scope of services to be performed:

- Actual Cost-Plus-Fixed Fee (see Exhibit 10-H Sample Cost Proposal, Example #1);
- Cost Per Unit of Work (see Exhibit 10-H, Sample Cost Proposal, Example #3);
- Specific Rates of Compensation (see Exhibit 10-H Sample Cost Proposal, Example #2);
- Lump Sum (see Exhibit 10-H Sample Cost Proposal, Example #1).

### **Actual Cost-Plus-Fixed Fee**

The consultant is reimbursed for actual costs incurred and receives an additional predetermined amount as a fixed fee (profit). Federal regulations require that profit be separately negotiated from contract costs. The determination of the amount of the fixed fee shall take into account the size, complexity, duration, and degree of risk involved in the work. The fixed fee is not adjustable during the life of the contract. The fixed fee dollar amount must be clearly stated in the contract.

This method of payment is appropriate when the extent, scope, complexity, character, or duration of work cannot be precisely predicted. Fixed fees apply to the total direct and indirect costs. The contract shall specify a reasonable maximum length of contract period and a maximum total contract dollar amount (see Exhibit 10-H Sample Cost Proposal Example #1 and Exhibit 10-R A&E Sample Contract Language, Article V, *Option 1* in this chapter). The contract cost proposal must identify all key employees and/or classifications to be billed. New key employees and/or classifications must be approved before they incur work on the contract or the costs can be questioned or disallowed.

**Cost Per Unit of Work**

The consultant is paid based on specific item of work performed. The item of work must be similar, repetitious and measurable, such as geotechnical investigation and material testing. This method of payment is appropriate when the cost per unit of work can be determined with reasonable accuracy in advance; but the extent or quantity of the work is indefinite. Contract payment provisions must specify what is included in the price to be paid for each item. Any item of work not identified in the contract cost proposal is not eligible for reimbursement. New items of work (those within the original scope of work only) must be amended into the contract before work is performed. The contract shall also specify a reasonable maximum length of contract period and a maximum total contract dollar amount (see Exhibit 10-H Sample Cost Proposal, Example #3 and Exhibit 10-R A&E Sample Contract Language, Article V, *Option 2*).

**Specified Rates of Compensation**

The consultant is paid at an agreed and supported specific fixed hourly, daily, weekly or monthly rate, for each class of employee engaged directly in the work. Such rates of pay include the consultant's estimated costs and net fee (profit). Federal regulations require that profit be separately negotiated from contract costs. The specific rates of compensation, except for an individual acting as a sole proprietor, are to include an hourly breakdown, direct salary costs, fringe benefits, indirect costs, and net fee. Other direct costs may be included, such as travel and equipment rentals, if not already captured in the indirect cost rate.

This method of payment should only be used when it is not possible at the time of procurement to estimate the extent or the duration of the work, or to estimate costs with any reasonable degree of accuracy. This method is recommended for on-call contracts for specialized or support type services, such as construction engineering and inspection, where the consultant is not in direct control of the number of hours worked, and it also requires management and monitoring of consultant's level of effort and the classification of employees used to perform the contracted work. The contract shall also specify a reasonable maximum length of contract period and a maximum total contract dollar amount (see Exhibit 10-H Sample Cost Proposal, Example #2 and Exhibit 10-R A&E Sample Contract Language, Article V, *Option 3*).

**Lump Sum or Firm Fixed Price**

The consultant performs the services stated in the contract for an agreed amount as compensation, including a net fee or profit. This method of payment is appropriate only if the extent, scope, complexity, character, duration, and risk of the work have been sufficiently defined to permit fair compensation to be determined and evaluated by all parties during negotiations (see Exhibit 10-H Sample Cost Proposal, Example #1 and Exhibit 10-R A&E Sample Contract Language, Article V, *Option 4*).

Normally, a lump sum contract will be paid in full at end of the contract when completed. However, a lump sum contract can be negotiated with progress payment if feasible. The progress payment shall be based on percent of work complete or completion of clearly defined "milestones." The contract cost proposal shall document the agreed upon progress payment and include the necessary milestones costs, or the percent work complete schedule.

### 10.3 A&E CONSULTANT AUDIT AND REVIEW PROCESS

This section outlines the audit and review process for A&E contracts that at any time use state or federal funds. All proposed A&E contracts and supporting documents are subject to audit or review by Caltrans' Audits and Investigations (A&I), other state audit organizations, or the federal government. Not all proposed contracts will be audited or reviewed; rather, they will be selected on a risk-based approach. Figure 2 "Segmenting Consultant Work," near the end of this section, shows an overview of the audit and review process.

#### Applicable Standards

The state and federal requirements listed below, as well as specific contract requirements, serve as the standards for audits and reviews performed. The local agencies, consultants, and subconsultants are responsible for complying with state, federal and specific contract requirements. Local agencies are responsible for determining the eligibility of costs to be reimbursed to consultants. Applicable standards include, but not limited to:

- Caltrans Local Assistance Procedures Manual (LAPM);
- Project Program Supplemental Agreements;
- 23 CFR, Chapter 1, Part 172 – Administration of Engineering and Design Related Service Contracts;
- 48 CFR, *Federal Acquisitions Regulation Systems (FAR)*, Chapter 1 FAR, Part 31- Contract Cost Principles and Procedures;
- 48 CFR, Chapter 99 – *Cost Accounting Standards*, Subpart 9900;
- 49 CFR, Transportation, Subtitle A, Office of the Secretary of Transportation, Volume 1, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Government;
- 49 CFR, Part 18.20 – Standards for Financial Management Systems;
- 23 USC, Part 112 – *Letting of Contracts*;
- United States Government Accountability Office, *Government Auditing Standards (GAS)*;
- Proposed contract terms and conditions.

See section 10.10 "References" of this Chapter for links to above referenced standards.

#### Audit Guidance Available

The American Association of State Highway Officials, Uniform Audit & Accounting Guide ([AASHTO Audit Guide](http://audit.transportation.org/Documents/UAAG-3%20FINAL.pdf)) or (<http://audit.transportation.org/Documents/UAAG-3%20FINAL.pdf>), which is referred to frequently in this section, is an invaluable tool to guide local agencies, consultants and certified public accountants (CPAs) through the requirements for establishing, and audits of, FAR compliant indirect

cost rates (ICRs). The AASHTO Audit Guide is used extensively as an industry guide in the audit and review process.

The local agency may seek financial and accounting assistance from its own internal audit staff.

The consultant may also seek professional guidance in selecting its independent CPA. See also the AASHTO Audit Guide, Ch 2.5 C. *Selection of CPA Firm as Overhead Auditor* for guidance in the selection process.

Training is also offered by FHWA's National Highway Institute (see <http://www.nhi.fhwa.dot.gov/default.aspx>). Courses offered include:

- Using the AASHTO Audit Guide for the Procurement and Administration of A&E Contracts (FHWA-NHI-231028)
- Using the AASHTO Audit Guide for the Development of A&E Consultant Indirect Cost Rates (FHWA-NHI-231029)
- Using the AASHTO Audit Guide for the Auditing and Oversight of A&E Consultant Indirect Cost Rates (FHWA-NHI-231030)

### **Contracts and Consultants Selected for Audit or Review**

Whether a proposed contract or consultant is selected for audit or review through A&I's risk-based approach is dictated by the dollar thresholds of the proposed contract, and other risk factors listed below.

**Dollar thresholds for audits or reviews are stratified as follows:**

- Less than \$150K – no audit or review is required, but is optional;
- Between \$150K and \$1M (Case 1);
- Between \$1M and \$3.5M (Case 2);
- \$3.5M and above (Case 3).

Specifics of Cases 1, 2 and 3 are outlined later in this section.

**Risk factors considered include the consultant's, but not limited to:**

- History of satisfactory performance;
- Prior FAR compliant history and audit frequency;
- Financial stability;
- Conformance to terms and conditions of previous contracts;
- General responsiveness and responsibility;
- The approximate dollar amount of all A&E contracts awarded to the consultant by Caltrans or a local agency in California within the last three calendar years;
- The number of states in which the consultant does business;

- The type and complexity of the consultant's accounting system;
- The relevant professional experience of any CPA performing audits of the consultant's indirect cost rate (ICR);
- Responses to internal control questionnaire (ICQ), see AASHTO Audit Guide, Appendix B;
- Changes in the organizational structure.

If audited or reviewed, contracts, cost proposals, and ICR(s) shall be modified to conform to audit and review recommendations that address requirements. Local agencies are responsible for ensuring contracts, cost proposals, and ICR(s) are modified to conform to audit and review recommendations as necessary, and to ensure that audit findings and review deficiencies are resolved in a timely manner.

The local agency may be subject to the sanctions outlined in Chapter 20 "*Deficiencies and Sanctions*" if the state or federal government determines that any reimbursements to the consultant are the result of the lack of proper contract provisions, unallowable charges, unsupported activities, or an inadequate financial management system.

### Subconsultant Impacts

Subconsultants are required to follow all the federal, state, and contract requirements outlined above in *Standards that Apply*. In addition, all subconsultants are required to:

- Certify their contract costs and financial management system (Exhibit 10-K Consultant Certification of Contract Costs and Financial Management System) when the *total* contract between the prime consultant and the local agency is \$150K or more. (23 U.S.C. 112(b)(2)(B)).  
Reminder: The contract is between the local agency and the prime consultant. Subconsultants, as parties to the contract, must also adhere to this requirement.
- Use the accrual basis of accounting when developing their ICRs.
- Have an adequate job costing system.

Subconsultants' cost proposals also must be submitted along with the prime consultants' cost proposals through the request for audit process (see Exhibit 10-A A&E Consultant Audit Request Letter and Checklist) when the total (prime plus subs) proposed contract is \$1M or more.

### Cognizant Letters of Approval

"Cognizant" audits and reviews have been developed to assign primary responsibility for an ICR audit to a single entity (the "cognizant agency") to avoid duplication of audit work performed in accordance with Government Auditing Standards. The objective of these audits and reviews is to obtain reasonable assurance that claimed costs are in accordance with the FAR cost principles. A cognizant agency may be the home state Department of Transportation (DOT) (the state where the consultant's financial records are located), a federal agency, or a non-home state DOT to whom the home state has transferred cognizance. When providing cognizant ICR approval the cognizant agency may either perform an ICR audit themselves, or they may review and rely on the work/ workpapers related to an ICR audit performed by a CPA. The desired outcome of a cognizant audit or CPA Workpaper Review is for the "cognizant agency" to issue a Cognizant Letter of Approval so that the ICR can be relied upon

on future contracts with the consultant for a given year and for reliance by other state agencies using the same consultant.

A&I will accept a consultant's cognizant approved ICR for the applicable one-year accounting period, if rates are not under dispute. The consultant is responsible for providing documentation of its cognizant approved ICR and Cognizant Letter of Approval.

## **Most Common Audits and Reviews to be Performed**

### **Indirect Cost Rate (ICR) Audits**

During an ICR audit, the auditors (A&I or independent CPAs) will examine the consultant's proposed ICR for the applicable one-year accounting period on the proposed contract to ensure that unallowable costs have been removed from the overhead, that allowable costs have been correctly measured and properly allocated, and that the ICR has been developed in accordance with the FAR cost principles (as specified in 23 USC 112(b)(2)(B), 23 CFR 172.7(a), and 48 CFR Part 31). As a result of the audit, the local agency will work with the consultant to adjust the ICR where disallowed costs are identified based on audit recommendations.

ICR Audits apply to Case 1 and Case 2 contracts (see Case descriptions below) selected for audit. Cognizant Letters of Approval are issued with ICR Audits.

For guidance regarding the existing policies and procedures set forth in the Federal Regulations, and acceptable samples of ICR schedules, refer to the AASHTO Audit Guide, Chapter 5.

The review program in the AASHTO Uniform Audit Guide, Appendix A, should be used as a guide in performing ICR audits. This review program will be used for reviews of CPA audited ICR workpapers.

**IMPORTANT NOTE FOR CPAs:** Contracts receiving state or federal funds are highly scrutinized. Materiality levels tend to be lower and more testing required. Strict use of the AASHTO Audit Guide cannot be stressed enough.

### **CPA Audited ICR Workpaper Reviews**

During a CPA Audited ICR Workpaper Review, A&I will review the CPA's workpapers of its ICR audit to determine whether it is appropriate to issue a Cognizant Letter of Approval. The Workpaper Review is conducted to determine whether: (a) the CPA's audit was conducted in accordance with Generally Accepted Government Auditing Standards (GAGAS), (b) the CPA adequately considered the auditee's compliance with FAR Part 31 and related laws and regulations, and (c) the audit report format is acceptable. Chapter 11 of the AASHTO Audit Guide includes a recommended format for the audit report and required disclosures.

CPA Audited ICR Workpaper Reviews apply to Case 3 contracts (see Case descriptions below) selected for review. Cognizant Letters of Approval are issued with CPA Workpaper Reviews.

The review program in the AASHTO Uniform Audit Guide, Appendix A, will be used as a guide in performing CPA Workpaper Reviews.

**IMPORTANT NOTE FOR CPAs:** Contracts receiving state or federal funds are highly scrutinized. Materiality levels tend to be lower and more testing required. Strict use of the AASHTO Audit Guide cannot be stressed enough.

## **Other Audits and Reviews That May be Performed**

### **Contract Audits and Reviews**

During a Contract Audit or Review, auditors will review contracts and the consultants' financial management system to determine if:

- The consultants' accounting system is adequate to accumulate and segregate costs;
- Proposed costs are reasonable;
- The contract contains all necessary fiscal provisions and the provisions are sufficient in content;
- Proper state and federal procurement requirements were followed;
- Direct labor costs are compliant;
- Other audits/reviews of the contract is necessary

### **Risk Assessments**

During a Risk Assessment auditors may require an ICQ and certification of the ICRs and may perform a certain level of analytical reviews of the ICRs. They may review the contract provisions, ICQ, ICR, and/or cost proposal(s) to determine if:

- The required fiscal provisions are in the proposed contract;
- The ICR and/or cost proposal(s) are mathematically accurate and in the proper format;
- The ICR and/or cost proposal(s) contain questionable costs.

### **Incurred Cost Audits**

During an Incurred Cost Audit auditors will review contracts to determine if costs claimed are:

- Adequately supported;
- Reasonable in nature;
- Allowable, allocable, and reasonable;
- In compliance with state and federal laws and regulations;
- In compliance with the fiscal provisions stipulated in the contract.

### **Financial Management System Review**

During a Financial Management System Review auditors will determine whether:

- The accrual basis of accounting was used to prepare the ICR;
- There is a job cost accounting system adequate to accumulate and segregate allocable and allowable project costs;



- The consultant complied with 49 CFR, Part 18.20, Standards for Financial Management Systems.

### **CASE 1: Proposed A&E Consultant Contracts of \$150,000 or More**

#### **Consultants**

Prime consultants with a proposed contract *totaling* \$150,000 or more, *and* any subconsultants listed on the contract, must certify the accuracy of their contract costs and adequacy of their financial management systems (see Exhibit 10-K Consultant Certification of Contract Costs and Financial Management System). The certification is to be submitted to the local agency who in turn will forward a copy to A&I.

Components include certification that:

- All costs included in the proposed contract to establish final ICR are allowable in accordance with the cost principle of the FAR, 48 CFR, Part 31.
- The proposed contract does not include any costs which are expressly unallowable under the cost principles of the FAR, 48 CFR, Part 31.
- All known material transactions or events that have occurred affecting the firm's ownership, organization, and ICRs have been disclosed.
- The consultant's financial management system meets the standards for financial reporting, accounting records, internal and budget controls set forth in the FAR 49 CFR, Part 18.20.
- The consultant has provided the approximate dollar amount of all A&E contracts awarded by Caltrans or a California local agency to the consultant within the last three calendar years, and for all state DOT and local agency contracts, and the number of states in which the firm does business.
- All direct costs included in the proposed contract are reasonable, allowable, and allocable in accordance with FAR 48 CFR, Part 31, in compliance with applicable accounting principles, and in compliance with the terms of the proposed contract.

Consultants must also ensure their ICRs are prepared in the acceptable ICR scheduled format, see AASHTO Guide, Chapter 5 tables.

#### **Local Agencies**

Local agencies are to forward copies of the consultant and subconsultant, if any, certification (Exhibit 10-K "Consultant Certification of Contract Costs and Financial Management System") to A&I. See **bottom of this section for A&I's Email or mailing address**. All supporting documentation, including Exhibit 10-L Local Agency Certification of Cost Analysis, must be retained in the project files for the required retention period in the event an audit or review is performed.

Case 1 consultants and contracts may be selected for audit or review through a risk based approach described earlier in this section. Potential audits or reviews can be, but are not limited to:

- Contract Audits;
- Incurred Cost Audits;

- Financial Management System Review;
- ICR Audits;
- Risk Assessments.

**CASE 2: Proposed A&E Consultant Contracts of \$1M or More**

Local agencies and consultants with a proposed contract *totaling* between \$1M and \$3.5M must comply with all the requirements outlined in Case 1 above.

In addition, local agencies must send copies of the proposed contract and additional supporting documentation to A&I for review in conformance with certain requirements outlined in the LAPM. Once the proposed contract and additional supporting documentation are reviewed, A&I will issue a Conformance Letter noting any deficiencies, if any. A&I will issue the Conformance Letter within 30 business days of receipt of a **complete** packet.

A **complete** packet consists of the documents listed below. Local agencies are required to provide these documents to A&I (see Exhibit 10-A A&E Consultant Audit Request Letter and Checklist):

1. Proposed contract between the local agency and consultant;
2. Cost proposal(s) for prime consultant *and* all subconsultants;
3. Names, mailing addresses, phone numbers and email addresses for prime consultant *and* subconsultants;
4. Name of local agency contact person, phone number, mailing addresses and email addresses;
5. Prime consultant generated ICR schedule prepared in accordance with applicable CFRs;
6. A completed ICQ (see AASHTO Audit Guide, Appendix B), including all applicable attachments, for the prime consultant;
7. Exhibit 10-K Consultant Certification of Contract Costs and Financial Management System for the prime *and* all subconsultants.

And one of the following, **if available**:

- A copy of the prior fiscal year, and most recently completed fiscal year cognizant approved ICR and approved state DOT Cognizant Letter of Approval;
- A copy of the prior fiscal year, and most recently completed fiscal year, ICR Schedules and audited report by an independent CPA. If a CPA audited ICR is available for the appropriate fiscal year (applicable one-year accounting period), then the consultant must use the audited ICR, or a lower ICR (*see 23 CFR 172.7(b) for guidelines*);
- A copy of the prior, and most recently completed fiscal year, ICR(s) evaluation or audit report on a prior Caltrans or local agency contract, and any other governmental agency report/review/attestation.

Through A&I's risk-based approach, consultants may be selected for an ICR or other contract audits or reviews. If an ICR Audit is performed and the consultant's ICR is in compliance with the FAR

principles, a Cognizant Letter of Approval will be issued. *See bottom of this section for A&I's Email or mailing address.*

### **CASE 3: Proposed A&E Consultant Contracts of \$3.5M or More**

Local agencies and consultants with a proposed contract *totaling* \$3.5 million or more must comply with all the requirements in Case 1 and 2 above. Also, consultants must provide the following to the local agency who in turn will forward a copy to A&I:

- A state DOT's approved ICR schedule **and** the Cognizant Letter of Approval;
- OR
- CPA Audited ICR Audit Report **and** a copy of the CPA audited financial statements, if any.

Through A&I's risk-based approach, CPA Audited ICR Workpaper Reviews may be performed. Local agencies are responsible for ensuring both the Consultant and its CPA provide full access to the CPA's workpapers, including making copies upon request. Failure to do so may be considered a breach of contract. If a review is performed and the CPA's work is in compliance with the FAR principles, a Cognizant Letter of Approval will be issued. *See bottom of this section for A&I's Email or mailing address.*

### **Requirements for a Conformance Letter**

A complete packet is required to begin a conformance review. See Case 2: Proposed A&E Consultant Contracts of \$1M or More above for elements of a complete packet.

Requirements for a Conformance Letter include:

- Exhibit 10-A A&E Consultant Audit Request Letter and Checklist and all applicable items listed.
- Cost proposal(s) presented in the applicable format for the method of payment for the prime consultant **and** all subconsultants in the proposed contracts (see Determine Method of Payment in Section 10.2 Identifying & Defining a Need for Consultants" and Exhibit 10-H Sample Cost Proposal for required formats and example proposals).
- ICRs prepared using the accrual basis of accounting for both the prime and subconsultants.
- An adequate financial accounting system (job cost system) for both the prime and subconsultants.
- The required fiscal provisions specified below must be included verbatim in the proposed contract (see Exhibit 10-R A&E Sample Contract Language for sample language and requirements):
  1. Performance Period (begin and end date) (Article IV);
  2. Allowable Costs and Payments (Article V);
  3. Termination (Article VI);
  4. Cost Principles and Administrative Requirements; (Article VII);

5. Retention of Records/ Audit; (Article VIII);
6. Audit Review Procedures, (Article IX);
7. Subcontracting (Article X);
8. Equipment Purchase (Article XI);
9. State Prevailing Wage Rates (Article XII);
10. Conflict of Interest (Article XIII);
11. Rebates, Kickbacks or other Unlawful Consideration (Article XIV);
12. Prohibition of Expending Local Agency State or Federal Funds for Lobbying (Article XV).

A Conformance Letter will be issued within 30 business days of receipt of a complete packet.

Contracts cannot be executed until the Conformance Letter is issued and noted deficiencies that address requirements, are corrected. Corrected deficiencies, however, do NOT need to be cleared through A&I before executing the contract. Any supporting documentation addressing Conformance Letter deficiencies along with the executed contract shall be retained in the project file.

A&I email address: [caltransfederalfundaward@dot.ca.gov](mailto:caltransfederalfundaward@dot.ca.gov)

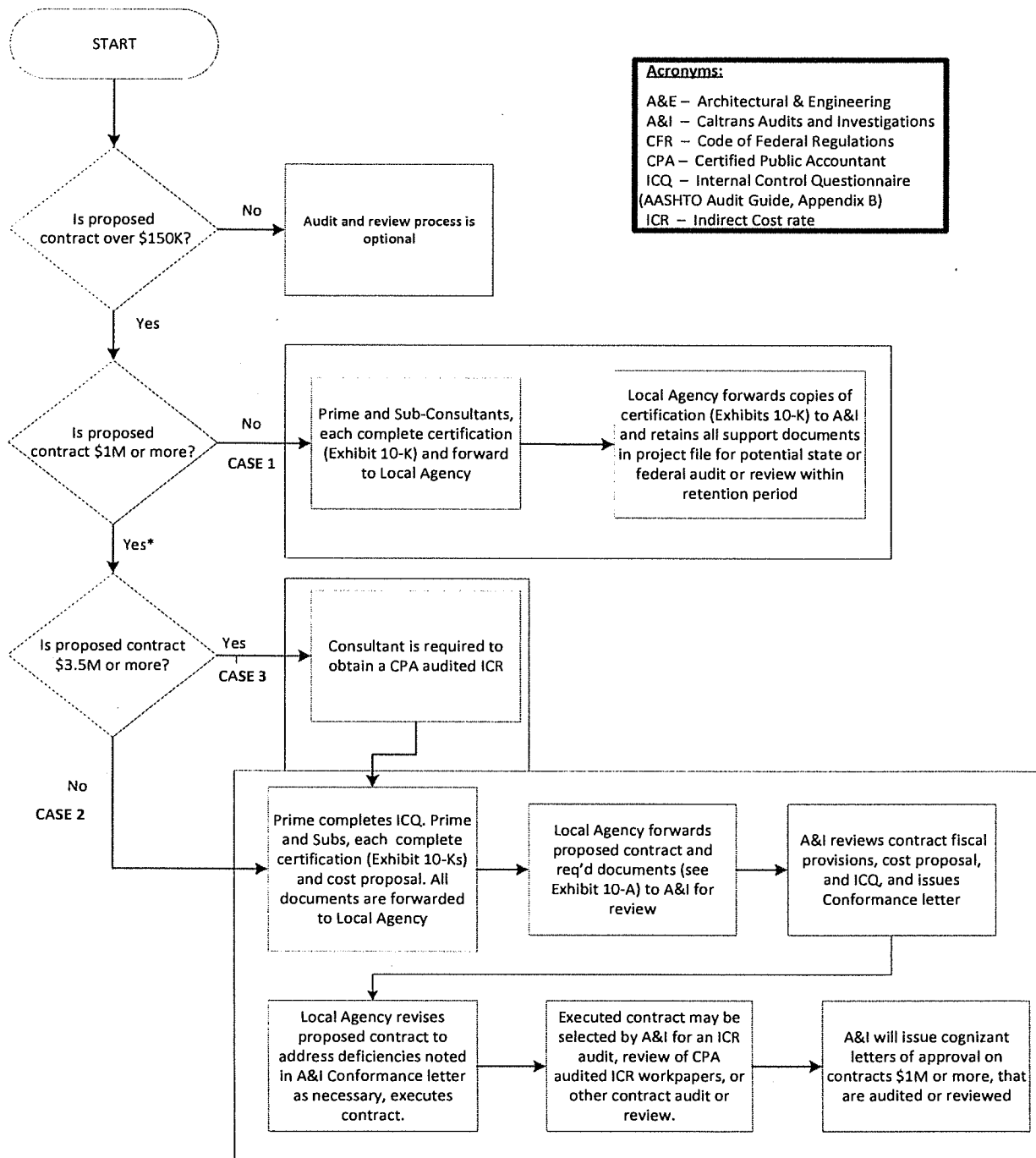
A&I mailing address:

Department of Transportation  
Audits and Investigations, MS 2  
Attention: External Audit Manager  
P.O. Box 942874  
Sacramento, CA 94274-0001

## Summary of Contracts to be Audited or Reviewed

<i>Proposed Contract Amount</i>	<i>Documents Required</i>	<i>Conformance Letter Required?</i>	<i>Audit/Review Performed?</i>	<i>If Audited or Reviewed, Will Cognizant Letter of Approval be Issued?</i>
<b>Small Purchase Procedure</b> Less than \$150K	None	No	Audit/review not required	N/A
<b>Case 1.</b> Between \$150K and \$1M	<ul style="list-style-type: none"> <li>• Certification by Prime and Subconsultants (Exhibit 10-K)</li> </ul>	No	May be selected for Audit or Review.	<i>If</i> Indirect Cost Rate (ICR) Audit is performed
<b>Case 2.</b> Between \$1M and \$3.5M	<ul style="list-style-type: none"> <li>• Certification for Prime and Subconsultants (Exhibit 10-Ks)</li> <li>• Cost proposals for Prime and Subconsultants</li> <li>• All other applicable documents listed on Exhibit 10-A</li> </ul>	Yes	May be selected for ICR or Contract Audit, or other Review.	Yes
<b>Case 3.</b> \$3.5M or greater	<ul style="list-style-type: none"> <li>• Certification for Prime and Subconsultants (Exhibit 10-Ks)</li> <li>• Cost proposals for Prime and Subconsultants</li> <li>• All other applicable documents listed on Exhibit 10-A</li> </ul> <p>AND</p> <p>CPA Audited ICR or cognizant approval.</p>	Yes	May be selected for Review of CPA's workpapers of audited ICR or Contract Audit, or other Review	Yes

Figure 10-3. A&amp;E Consultant Audit and Review Process



**\* NOTE:** For A&E consultant contracts of \$1M or more, local agency may begin, but not conclude cost negotiations with the best qualified firm until a Conformance Letter is received from A&I.

## 10.4 CONSULTANT SELECTION METHODS

Figure 10-4 “Consultant Selection Flowchart” shows the three methods normally used in selecting a consultant. They are:

- One-Step RFP;
- One-Step RFQ;
- Two-Step RFQ/RFP.

The method used depends upon the scope of work, the services required, the project’s complexity, and the time available for selection of the consultant.

In addition, there are other methods used in special situations such as noncompetitive procurement and small purchases under \$150,000.

Beginning with Section 10.5 “Consultant Selection Using the One-Step RFP Method” each of the selection methods is explained in detail. Regardless of the method used, the local agency shall retain all consultant selection documentation in their project files as required by 49 CFR 18.36(b)(9).

### One-Step RFP

The One-Step RFP method may be used for Project-specific contracts when the scope of work is well defined or for Multi-phased contracts where the defined scope of work is divided into phases. Other considerations include when the consultant’s services are highly specialized and there are few qualified consultants.

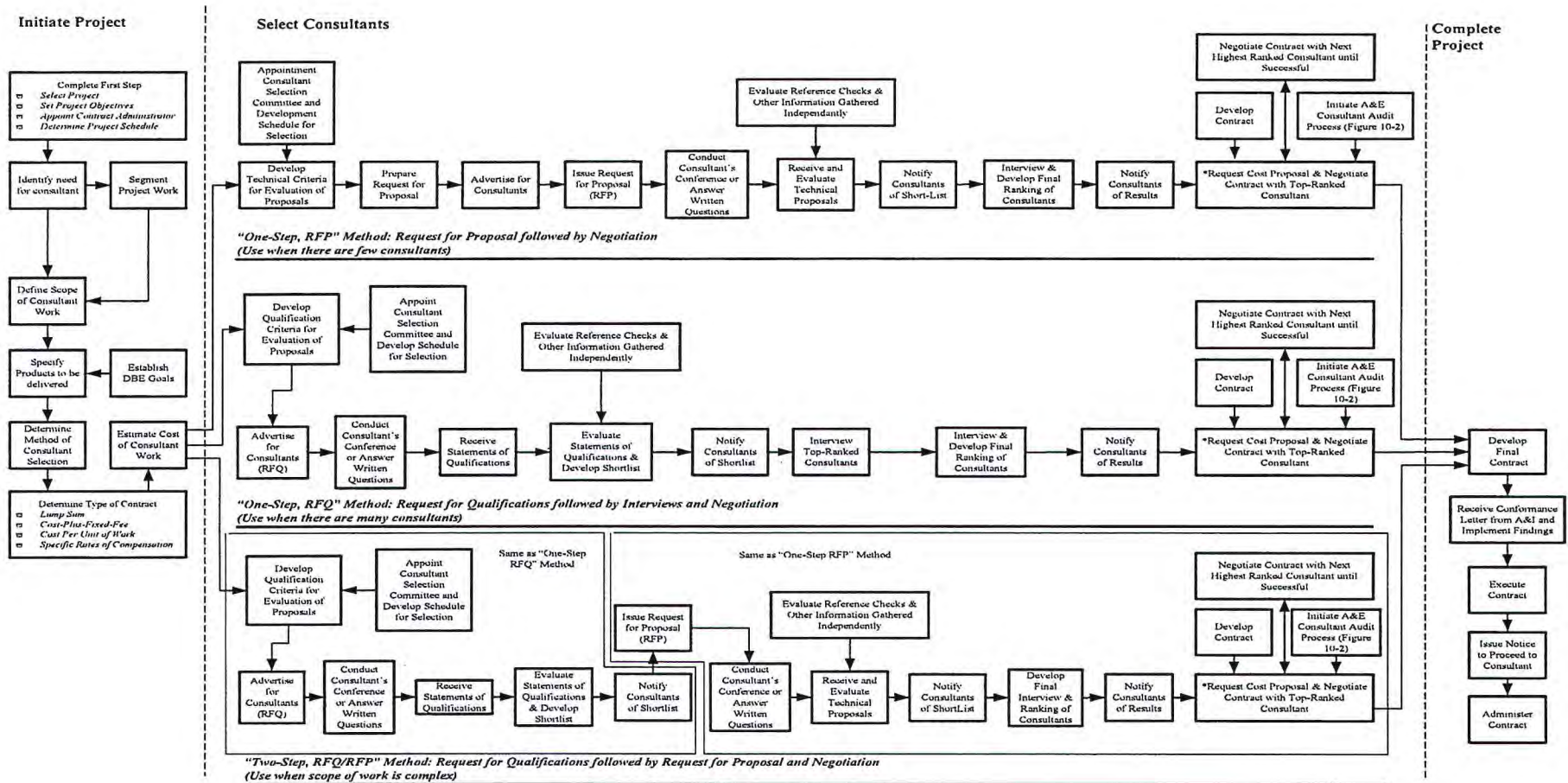
### One-Step RFQ

The most common selection process is the One-Step RFQ method. It is used when the requested services are specialized, or the scope of work is defined broadly and may include multiple projects. Typical services are preliminary engineering, surveying, environmental studies, preparation of Plans Specifications and Estimate (PS&E) and environmental documents, or construction management. This method or the two step selection process is used for procurement of “on-call” contract(s).

### Two-Step (RFQ Followed by RFP)

The Two-Step RFQ/RFP method may be used when the scope of work is complex or unusual. This method also may be preferred by local agencies that are inexperienced about negotiations and procedures for establishing compensation. However, the Two-Step RFQ/RFP method is recommended for procurement of multiple “on-call” contracts, or “on-call” list, through a single solicitation. For more information, refer to description of on-call contract in Section 10.2 “*Identifying & Defining a Need for Consultants.*” This method requires substantially more work and time than the other two methods described above.

Figure 10-4. Consultant Selection Flowchart





## 10.5 CONSULTANT SELECTION USING THE ONE-STEP RFP METHOD

Of the three methods discussed, this one is most easily modified for non-A&E consulting contracts. For non-A&E consulting contracts, a cost proposal may be part of the RFP and the selection criteria. For A&E contracts, the cost proposal is not requested until the consultants have been final ranked based upon their submitted technical proposal.

### **Appoint Consultant Selection Committee**

A consultant selection committee with a minimum of three members is appointed at the beginning of the consultant selection process. The committee reviews materials submitted by consultants, develops a shortlist of qualified consultants, and develops a final ranking of the most qualified proposals. Representation on the committee includes the Contract Administrator and subject matter experts from the project's functional area. The members should be familiar with the project/segment to be contracted out and with the local agency standards that will be used in the contract. Participation by a Caltrans district representative is at the option of the agency and subject to availability of the DLAE staff. Caltrans participation on the interview panel does not relieve the local agency of its responsibility to ensure that proper procurement procedures are followed and all requirements are met.

Local agency Contract Administrator ensures that all committee members meet the conflict of interest requirements (23 CFR 172) by completing and signing a conflict of interest statement prior to selection process initiation. A sample conflict of interest form is provided in Exhibit 10-T Panel Member Conflict of Interest & Confidentiality Statement.

### **Develop Technical Criteria for Evaluation of Proposals**

The Contract Administrator is responsible for developing the technical criteria, and their relative importance which are used to evaluate and rank the consultant proposals.

The criteria and relative weights must be included in the RFP, and the same criteria and relative weights must be used in the evaluation sheets. Failure to include criteria and relative weights and to use the same criteria and weights during the evaluation will result in the contract costs being ineligible for federal or state reimbursement. Exhibit 10-B Suggested Consultant Evaluation Sheet is a recommended evaluation sheet with criteria and rating points for A&E consultants, where cost is not used as a rating factor. This format is not mandatory, but it is recommended in the interest of developing consistency among the hundreds of agencies and consultants operating in the state. The local agency should consult with the DLAE before making major changes to the suggested approach.

### **Develop Schedule for Consultant Selection**

Before the contract is advertised, the Contract Administrator completes a contract procurement schedule including key dates for consultant selection activities. The Contract Administrator should confirm key dates with all selection committee members before completing the schedule.

### **Prepare RFP**

The information required in a RFP includes the following:

- Description of project;
- Scope of work;
- Schedule of work (including estimated start and end dates of the contract);
- Method of payment, and cost proposal requirements. The cost proposal is submitted in a separate sealed envelope. See Exhibit 10-H Sample Cost Proposal for sample cost proposal formats;
- Contract audit and review process requirements (see Section 10.3 A&E Consultant Audit and Review Process);
- Proposal format and required contents;
- Method, criteria and weighting for selection;
- A DBE contract goal is specified (see Exhibit 10-I Notice to Proposers DBE Information), if a federal-aid contract;
- Protest procedures and dispute resolution process per 49 CFR 18.36(b)(12).

The RFP specifies the content of a proposal, the number of copies required, due date, mailing address, and a physical address where the submittals may be hand delivered if different from the mailing address. Two to four weeks is usually allowed between the time the RFP is published and time that proposals must be submitted. More time may be required for complex contracts or projects.

Items typically required in a technical proposal include:

- Work plan (specify what is to be covered);
- Organizational chart;
- Schedule and deadlines;
- Staffing plan;
- Proposed Team—complete for prime consultant and all key subconsultants;
- Key personnel names and classifications—key team members identified in the original proposal/cost proposal shall not change (be different than) in the executed contract;
- Staff resumes;
- Names of consultant's project manager and the individual authorized to negotiate the contract on behalf of the consulting firm;
- Consultant DBE Commitment document, see Exhibit 10-O1 Consultant Proposal DBE Commitment;
- References.

### **Financial Management and Accounting System Requirements**

The local agency must ensure that consultant contract solicitation and advertising documents (RFPs) clearly specify that contracts shall not be awarded to a consultant without an adequate financial management and accounting system as required by 48 CFR Part 16.301-3, 49 CFR Part 18, and 48 CFR Part 31. The local agency must ensure the selected consultants have adequate financial management systems as required by the applicable federal regulations.

**Advertise for Consultants**

The solicitation process for consultant services shall be by public advertisement, or by any other public forum or method that assures qualified in-State and out-of-State consultants are given a fair opportunity to be considered for award of contract.

Advertisement of the RFP in a major newspaper of general circulation, technical publications of widespread circulation, professional associations and societies, recognized DBE organizations, web hosting or clearing houses known for posting government contract solicitations such as BidSync, or posting the RFP on the local agency's or other widely used websites are all acceptable methods of solicitation.

To document website postings, the local agency should retain copies of screen shots displaying the posted "begin/end" dates.

**Issue/Publish RFP**

The local agency shall publish the RFP on line and also issue the RFP to all consultants responding to newspaper advertisement. The local agency shall keep a record of all consultants that have downloaded RFP on line as well as those receiving an RFP through other means, to ensure that any inquiry responses, addendums, or amendments to the RFP are given to all consultants that received the RFP.

**Conduct Proposer's Conference or Answer Written Questions**

The local agency may allow for clarification of the RFP by inviting submittal of written questions or by conducting a proposer's conference, or by doing both. The local agency must publish or mail their responses to any written questions to all consultants receiving the RFP. No response should be given to verbal questions. It is important that all competing consultants receive the same information. If a proposer's conference is to be held, the exact time and place must be specified in the RFP. Attendance at a proposer's conference normally is not mandatory. However, consultants not attending the conference do not receive notes from the meeting unless they request the notes.

**Receive and Evaluate Technical Proposals**

The Contract Administrator must verify that each proposal contains all of the forms and other information required by the RFP. If all required information is not provided, a proposal may be considered nonresponsive and rejected without evaluation. Late submittals, submittals to the wrong location, or submittals with inadequate copies are considered nonresponsive and shall be rejected. Submittal of additional information after the due date shall not be allowed.

Documentation of when each proposal was received must be maintained in the project files. Copies of date stamped envelope covers or box tops are recommended.

The members of the consultant selection committee must evaluate each proposal according to the technical criteria listed in the RFP. Minimum of three proposals must be received and evaluated.

If only two proposals are received, a justification must be documented to proceed with the procurement. If only one proposal is received, a Non-Competitive process must be justified and

a Public Interest Finding (PIF) must be documented. In either case, the re-advertisement of the RFP should be considered as an option.

The committee must also evaluate reference checks and other information gathered independently. Reference checks shall be completed and other information gathered before the interviews are conducted. If necessary, the results of the reference checks or other information may be discussed with the highest ranked qualified consultants at the interviews.

### **Develop Final Ranking and Notify Consultants of Results**

The selection committee discusses and documents the strengths and weaknesses of each proposal; interviews the three or more highest ranked consultants (short listed); and develops a final ranking of the highest ranked consultants. All consultants that submitted proposals must be informed about the final ranking of consultants. It is important that all competing consultants receive the same information.

Most consultants will request information as to why they were not the highest ranked. Therefore, the selection committee should keep notes as to why a particular consultant was not selected. When a consultant requests debriefing, the reasons for not being selected must be objective reasons. The consultant should not be compared to others, and should not be provided with information about other consultants during this debriefing. Normally, the Contract Administrator does the debriefing; however, any member of the selection committee may be designated to do the debriefing.

### **Negotiate Contract with Top-Ranked Consultant**

Cost proposal (for both Prime and all Subconsultant), and contract audit and review documents such as Exhibit 10-Ks Consultant Certification of Costs and Financial Management System and Exhibit 10-A A&E Consultant Audit Request Letter and Checklist, whichever applicable (see Section 10.3 "A&E Consultant Audit and Review Process") should be submitted in a separate sealed envelope. Typically, the cost proposals are submitted by the short listed consultants only, at time of interview. However, if time is of the essence and it can be justified, or if no interviews are planned, the cost proposal can be requested from all consultant with their technical proposal.

The cost proposal for the most qualified consultant will be opened and used to begin negotiations. If agreement cannot be reached, then negotiations proceeds to the next most qualified consultant. Each consultant's cost proposal must remain sealed until negotiations commence with that particular consultant. The goal of negotiations is to agree on a final contract that delivers the services, or products required at a fair and reasonable cost to the local agency. At the completion of successful cost negotiations, all remaining sealed envelopes containing cost proposals shall be returned to consultants.

The independent cost estimate, developed by the local agency in advance of requesting a cost proposal from the top-ranked consultant, is an important basis and tool for negotiations or terminating unsuccessful negotiations with the most qualified consultant. It can be revised, if needed, for use in negotiations with the next most qualified consultant.

A contract audit and review may be required (see Section 10.3 “*A&E Consultant Audit and Review Process*” in this chapter). Local agency Contract Administrator ensures that all required documentations are provided to Caltrans A&I in a timely fashion, including all documents for a Conformance Review, if applicable. Negotiations may be completed after receipt of the Caltrans A&I Conformance Letter. An indirect cost audit may be performed within the record retention period of the contract.

Items typically negotiated include:

- Work plan;
- Schedule and deadlines (for deliverables and final duration of contract);
- Products to be delivered;
- Classification, wage rates, and experience level of personnel to be assigned;
- Cost items, payments, and fees.

The consultant’s ICR is not a negotiable item. A lower rate cannot be negotiated by the local agency.

The local agency and the consultant will agree on the final cost proposal and incorporate into final contract.

Before executing the consultant contract, the local agency must review contract to ensure that all federal and state requirements have been met (see Exhibit 10-C Consultant Contract Reviewers Checklist), and all deficiencies identified in the Conformance Letter have been addressed and resolved, if applicable. The completed checklist is to be signed by the Contract Administrator and the original retained in the project file, one copy is to be sent to the DLAE (for review of completeness) and filing within 30 days after awarding the contract.

## 10.6 CONSULTANT SELECTION USING THE ONE-STEP RFQ METHOD

The RFQ method is used when the services being procured are specialized, or the scope of work is defined broadly and may include multiple projects.

### **Appoint Consultant Selection Committee**

A consultant selection committee with a minimum of three members is appointed at the beginning of the consultant selection process. The committee reviews and scores the materials submitted by consultants in response to the RFQ, develops a shortlist of qualified consultants, interviews those consultants, and develops a final ranking of the most qualified consultants. Representation on the committee includes the Contract Administrator and subject matter experts from the project’s functional area. The members should be familiar with the scope of work to be contracted out and with the local agency standards that will be used in the contract. Participation by a Caltrans district representative is at the option of the local agency and subject to the availability of the DLAE staff. Caltrans participation on the interview panel does not relieve the local agency of its responsibility to ensure that proper procurement procedures are followed and all requirements are met.

Local agency Contract Administrator ensures that all committee members meet the conflict of interest requirements (23 CFR 172) by completing and signing a conflict of interest statement

prior to selection process initiation. A sample conflict of interest form is provided in Exhibit 10-T Panel Member Conflict of Interest & Confidentiality Statement.

### **Develop Technical Criteria for Evaluation of Qualifications**

The Contract Administrator is responsible for developing the technical criteria, and their relative importance which are used to evaluate and rank the consultant qualifications. The criteria and relative weights must be included in the RFQ, and the same criteria and relative weights must be used in the evaluation sheets. Failure to include criteria and relative weights and to use the same criteria and weights during the evaluation will result in the contract costs being ineligible for federal or state reimbursement. Exhibit 10-B Suggested Consultant Evaluation Sheet is a recommended evaluation sheet with criteria and rating points for A&E consultants, where cost is not used as a rating factor. This format is not mandatory, but it is recommended in the interest of developing consistency among the hundreds of agencies and consultants operating in the state. The local agency should consult with the DLAE before making major changes to the suggested approach.

### **Develop Schedule for Consultant Selection**

Before a contract is advertised, the Contract Administrator completes a contract procurement schedule including key dates for consultant selection activities. The Contract Administrator should confirm target dates with all selection committee members before completing the schedule.

### **Prepare RFQ**

As a minimum, the RFQ generally includes the following:

- General description of the services or project(s);
- Scope of work;
- Schedule of work (including contract begin and end dates);
- Method of payment, and cost proposal requirements. The cost proposal is submitted in a separate sealed envelope. See Exhibit 10-H Sample Cost Proposal for sample cost proposal formats;
- Contract audit and review process requirements (see Section 10.3 "A&E Consultant Audit and Review Process");
- Statement of Qualification (SOQ) format and required content to be submitted;
- Method and criteria and weights for selection;
- A DBE contract goal is specified (see Exhibit 10-I Notice to Proposers DBE Information), if a federal-aid contract;
- Protest procedures and dispute resolution process per 49 CFR 18.36(b)(12).

The RFQ specifies the content of the SOQ, the number of copies required, due date, mailing address, and a physical address where the submittals may be hand delivered if different from the mailing address. Two to four weeks is usually allowed between the time the RFQ is published and time that SOQs must be submitted. More time may be required for complex contracts or scope of work.

Items typically required in a statement of qualification include:

- Qualifications of key personnel (including consultant project manager) proposed for the contract. Key team members identified in the original proposal/cost proposal shall not change (be different than) in the executed contract;
- Staff resumes;
- Related projects that key personnel have worked on;
- Qualifications/experience of the firm;
- Organizational chart;
- Forecast or Schedule of work;
- Consultant DBE Commitment document, see Exhibit 10-O1 Consultant Proposal DBE Commitment;
- References.

### **Financial Management and Accounting System Requirements**

The local agency must ensure that Consultant contract solicitation and advertising documents (RFQs) clearly specify that contracts shall not be awarded to a consultant without an adequate financial management and accounting system as required by 48 CFR Part 16.301-3, 49 CFR Part 18, and 48 CFR Part 31. The local agency must ensure the selected consultants have adequate financial management systems as required by the applicable federal regulations.

### **Advertise for Consultants**

The solicitation process for consultant services shall be by public advertisement or any other public forum or method that assures qualified in-State and out-of-State consultant are given a fair opportunity to be considered for award of contract. The RFQ must contain sufficient project work information, so that interested consultants can submit an appropriate SOQ.

Advertisements for RFQ may take one of two approaches. The most common is an advertisement or publication of the RFQ in a major newspaper of general circulation, technical publication of widespread circulation, professional associations and societies, recognized DBE organizations, web hosting or clearing houses known for posting contract solicitations such as Bid Sync or posting the RFQ on other widely used websites. To document website postings, the local agency should retain copies of screen shots displaying the posted "begin/end" dates.

In the second approach, the local agency advertises the availability of the RFQ in a major newspaper of general circulation, technical publications of widespread circulation, professional associations and societies, recognized DBE organizations, or through a web hosting or clearing houses known for posting contract solicitations such as BidSync, and requests that interested consultants send a letter of interest to the local agency for the RFQ. The RFQs shall then be sent to those firms who indicated interest in the RFQ. In some cases, it may be desirable to advertise nationwide for a particular project or service. This approach provides a registry for firms who received the RFQ and therefore facilitates the broadcast of any revisions or addenda to the RFQ, if necessary.

**Issue/Publish RFQ**

The local agency shall publish the RFQ on line and also issue the RFQ to all consultants responding to newspaper advertisement. The local agency shall keep a record of all consultants that have downloaded RFQ on line as well as those receiving an RFQ through other means, to ensure that any inquiry responses, addendums, or amendments to the RFQ are given to all consultants that received the RFQ.

**Receive/Evaluate Statements of Qualifications and Develop Shortlist**

The first step in the evaluation process is to determine that each SOQ contains all forms and other information required by the RFQ. Otherwise, the submittals may be considered nonresponsive and rejected without evaluation. Late submittals, submittals to the wrong location, and submittals with inadequate copies are considered nonresponsive and shall be rejected. Submittal of additional information after the due date shall not be allowed. Documentation of when each proposal was received must be maintained in the project files. Copies of date stamped envelope covers or box tops are recommended.

Minimum of three proposals must be received and evaluated. If only two proposals are received, a justification must be documented to proceed with the procurement. If only one proposal is received, a Non-Competitive process must be justified and a Public Interest Finding (PIF) must be documented. In either case, the re-advertisement of the RFP should be considered as an option.

The consultant selection committee reviews the submitted SOQ according to the published evaluation criteria and weighting factors. The committee makes an independent random check of one or more of the consultant's references. This check applies to major subconsultants also. The committee establishes a shortlist of consultants who are considered to be best qualified to perform the contract work. The shortlist includes enough qualified consultants to ensure that at least three consultants are interviewed.

**Notify Consultants of Shortlist**

All consultants that submitted an SOQ must be notified of the results of the review. The notification also identifies those consultants (short list) that will be requested to attend interviews. Most consultants will request information as to why they were not placed on the shortlist. Therefore, the selection committee should keep notes why a particular consultant was not selected for the shortlist. When a consultant requests a debriefing, the reasons given for not being selected must be objective reasons. Consultants should not be compared with each other during the debriefing. Normally, the Contract Administrator does the debriefing; however, any member of the selection committee may be designated to do the debriefing.

**Interview Top-Ranked Consultants**

Each consultant to be interviewed is given a copy of the draft of the proposed contract, defining the detailed scope of work, and/or description of required services, and other information. This should be sent with the initial notification of the interview.

Between the time of the notification of the shortlist and interviews, the local agency may answer any questions concerning the scope of work to be contracted out, if not done earlier during the



solicitation. In addition, the local agency may conduct additional reference checks for each consultant to be interviewed. Consultants should submit their questions about the RFQ and receive their answers from the local agency in writing. It is important that all consultants on the shortlist receive the questions and answers and are given the same information.

The committee should evaluate reference checks and other information that is gathered independently. Reference checks shall be completed and other information gathered before the interviews are conducted. If necessary, the results of the reference checks and other information may be discussed with the consultant at the interview.

Interviews are to be structured and conducted in a formal manner. Each consultant shall be allowed the opportunity to make a presentation if desired; however, a time limit should be specified. Interview questions are prepared in advance.

Two types of questions may be asked:

- Questions that are to be asked of all competing consultants, and
- Questions relating to each specific consultant, based upon the reference checks, and the strengths and weaknesses identified during evaluation of the SOQ

The agency can request competing consultants to bring additional information or examples of their work to the interviews; if the additional information facilitates the interview or evaluation process.

Additional information requested should be kept at a minimum, that is, only information required to select the most qualified consultant for the contract. The selection committee or local agency shall not gather additional information concerning the consultants after the interviews are completed.

### **Develop Final Ranking and Notify Consultants of Results**

All consultants interviewed must be informed about the final ranking of consultants. It is important that all competing consultants receive the same information.

Most consultants will request information as to why they were not selected as the most qualified. Therefore, the selection committee should keep notes as to why a particular consultant was not selected. When a consultant requests debriefing, the reasons for not being selected must be objective. Consultants should not be compared with each other or provided with information about other consultants during the debriefing.

Normally, the Contract Administrator does the debriefing; however, any member of the selection committee may be designated to do the debriefing.

The next two sections provide guidance when the RFQ is solicited for “specialized” services and additional information is required prior to cost negotiations with consultant.

FOR ON-CALL CONTRACTS, SKIP THE NEXT TWO SECTIONS AND BEGIN NEGOTIATION PHASE.

### **Conduct Scoping Meeting**

The Contract Administrator meets with the first-ranked consultant’s project manager to review the project, and to ensure that the consultant has a complete understanding of the work that is

required. The consultant is shown as much material as is available regarding the project. Any technical questions regarding the project are answered for the consultant.

### **Request Cost Proposal**

The first-ranked consultant is asked to provide a cost proposal to perform the work described in the draft contract and discussed at the scoping meeting. The work is to be performed according to the conditions described in the draft contract using the payment method described therein. Alternatively, if time is of the essence and it can be justified, sealed cost proposals may be requested from all of the consultants on the shortlist.

If the contract involves more than one project, the consultant must provide a separate cost proposal for each project in addition to a summary cost proposal for the total contract. If the contract involves milestones, the consultant must furnish a separate cost proposal for each milestone with a summary cost proposal for the total costs. If the contract involves subconsultants, the prime consultant must include a separate cost proposal for each subconsultant. Each subconsultant's cost proposal must follow the same format as the prime consultant's cost proposal.

### **Negotiate Contract with Top-Ranked Consultant**

Cost proposal (for both Prime and all Subconsultant), and contract audit and review documents such as Exhibit 10-Ks Consultant Certification of Contract Costs and Financial Management System and 10-A, whichever applicable (see Section 10.3 "*A&E Consultant Audit and Review Process*") will be submitted in a separate sealed envelope. Typically, the cost proposals are submitted by the short listed consultants only, at time of interview. However, if time is of the essence and it can be justified, or if no interviews are planned, the cost proposal can be requested from all consultant with their statements of qualification.

After the top-ranked consultant submits a sealed cost proposal, the local agency reviews the cost proposal and enters into negotiations. The goal of negotiation is to agree on a final contract that delivers to the local agency the services or products required at a fair and reasonable cost. The independent cost estimate, developed by the local agency in advance of requesting a cost proposal from the top-ranked consultant, is an important basis and tool for negotiations.

Negotiations should commence with the most qualified consultant. If agreement on a fair and reasonable price cannot be reached, negotiations should then be formally terminated.

Negotiations then proceed to the next most qualified consultant, and so on. Each consultant's cost proposal must remain sealed until negotiations commence with that particular consultant. At the completion of successful cost negotiations, all remaining sealed envelopes containing cost proposals shall be returned to consultants.

A contract audit and review may be required (see Section 10.3 "*A&E Consultant Audit and Review Process*" earlier in this chapter). Local agency Contract Administrator is responsible for the submittal of all required documentations to Caltrans A&I in a timely fashion, including all documents for a Conformance Review, if applicable. Negotiations may be completed after receipt of the Caltrans A&I Conformance Letter. An indirect cost audit may be performed within the record retention period of the contract.

The items typically negotiated include:

- Work plan;
- Staffing plan;
- Schedule (including contract begin and end dates);
- Products to be delivered;
- Classification, wage rates, and experience level of personnel to be assigned;
- Cost items, payments and fee.

The consultant's ICR is not a negotiable item. A lower rate cannot be negotiated by the local agency.

For on-call contracts, typically a price agreement is reached based on specific rate of compensation for the term of the contract. The subsequent "task orders" (or mini agreements for individual project work) is negotiated based on actual cost plus fee, or lump sum, which is derived from the wage rates agreed upon earlier for the on-call contract.

Before executing the consultant contract, the local agency must review contract to ensure that all federal and state requirements have been met (see Exhibit 10-C Consultant Contract Reviewers Checklist), and all deficiencies identified in the Conformance Letter have been addressed and resolved, if applicable. The completed checklist is to be signed by the Contract Administrator and the original retained in the project file, one copy is to be sent to the DLAE (for review of completeness) and filing within 30 days after awarding the contract.

## 10.7 CONSULTANT SELECTION USING THE TWO-STEP RFQ/RFP METHOD

### Combined RFQ and RFP

Selecting consultants using the Two-Step RFQ/RFP method requires combining certain steps from each of the other two methods previously described. The consultants are rated based upon both their qualifications and their technical proposals.

The initial steps in this method (up to the development and notification of the shortlist) are the same as the steps followed when using the One-Step RFQ method. At this point, the consultants from the shortlist are issued an RFP. The remaining steps are the same as the later steps followed in the One-Step RFP method. The combination of these steps is indicated in Figure 10-4 *Consultant Selection Flowchart*.

Because it is a combination of the One-Step RFQ and One-Step RFP methods, this method of consultant selection requires more work and time than the other two methods. Consequently, the combined RFQ/RFP method is recommended for use only when the scope of work is very complex or unusual.

The Two-Step RFQ/RFP is also well suited for procuring multiple "on-call" contracts through single solicitation. The outcome of the first step - RFQ will be multiple contracts, or on-call list of consultants with cost/price agreements. The subsequent project work will be procured through individual competition or mini-RFPs amongst the on-call consultants. The mini-RFP or the task order will be negotiated with first ranked firm from each competition. Task order (mini-RFP)

cost will be based on wage rates established in the master on-call contract, and the time and deliverable requirements in the task order.

## 10.8 COMPLETING THE PROJECT

### Develop the Final Contract

The Contract Administrator requests a revised cost proposal from the consultant after:

(1) negotiations have been completed, (2) the local agency and consultant have agreed to a fair and reasonable price, and (3) a Conformance Letter, if applicable, is released by Caltrans A&I and identified issues have been resolved. The Contract Administrator should review the revised cost proposal to ensure that all the items and changes discussed during negotiation were included. This revised cost proposal then becomes the final cost proposal, is attached to and made a part of the consultant contract. For informational purposes, sample contract language and format have been included as Exhibit 10-R A&E Sample Contract Language.

The Contract Administrator has responsibility to ensure that the final negotiated contract is complete and has verified that all required backup documents have been provided. Copies of the contract are sent to the consultant for signature first.

### Review and Approval of Contracts

Proposed contracts for consultant services (including subcontracted work) exceeding \$150,000, must be reviewed by the local agency to verify that:

- Compensation is fair and reasonable and includes prevailing wage rates, if applicable;
- Work activities and schedules are consistent with the nature and scope of the project;
- DBE goal is included if there are subcontracting opportunities and available DBE firms
- Exhibit 10-Ks Consultant Certification of Contract Costs and Financial Management System (for Prime and Subs), and Exhibit 10-A A&E Consultant Audit Request Letter and Checklist and all supporting documents, if applicable, have been submitted to Caltrans A&I
- If applicable, the issues identified in the Conformance Letter have been addressed;
- Contract modification language entitling the local agency to retroactively adjust ICRs within the document retention period has been included in the contract (see Exhibit 10-R A&E Sample Contract Language, Article IX, paragraph D).

Exhibit 10-C Consultant Contract Reviewers Checklist must be used to ensure that required documentation has been provided. A cost proposal (see Exhibit 10-H Sample Cost Proposal), must include the costs of materials, direct salaries, payroll additions, other direct costs, indirect costs, fees, and backup calculations.

Before approving a contract for consulting services, the Contract Administrator must be satisfied that the consultant's organization:

- Is qualified to perform the services required;
- Is in a position, considering other work commitments, to provide competent and experienced personnel to perform the services in the time allowed;
- Is fully aware of all applicable federal and state laws including implementing regulations, design standards, specifications, previous commitments that must be incorporated into the design of the project, and administrative controls including those of Caltrans and FHWA.
- Has an adequate financial management system as required by the applicable federal regulations.

The contract must provide for a defined level of acceptability and a statement to the effect that the consultant may be required to modify its work as necessary; to meet that level of acceptability as defined in the contract. The contract shall provide for local agency reviews at appropriate stages during performance of the work, to determine if any changes or other actions are warranted.

The contract shall also provide that the consultant establish a working office at a place acceptable to the local agency. The contract shall provide that the consultant and subconsultants shall maintain all books, documents, papers, accounting records, and other information pertaining to costs incurred. Such materials must be available for inspection and audit by federal, State, and local agency authorized representatives; and copies thereof shall be furnished, if requested.

Following final settlement of the contract accounts with the FHWA or State, such records and documents may be archived at the option of the local agency, but in any event shall be retained for a three-year period after processing of the final voucher by the FHWA or State.

### **Retention Clauses**

At the option of the local agency, a retention clause may be included in the consultant contract. The usual retained amount is five percent; appropriate securities on deposit may be substituted for the retention. A retention clause in the consultant contract is recommended (see Exhibit 10-R A&E Sample Contract Language, Article XXXI).

### **Review of Local Agency Actions**

Issues identified in the Conformance Letter must be resolved before the local agency executes the contract.

Federal-aid or state reimbursement is contingent on meeting the federal or state requirements and can be withdrawn, if these procedures are not followed and documented. The local agency files are to be maintained in a manner to facilitate future FHWA or Caltrans process reviews and audits.

As specified in the "*Review and Approval of Contracts*" above, the Contract Administrator must review the proposed consultant contract before execution. Exhibit 10-C Consultant Contract Reviewers Checklist is to be completed and signed. A copy shall be sent to the DLAE within 30 days of contract award. This signed document must be retained in the local agency project files.

**Execute Contract and Issue Notice to Proceed to Consultant**

The Contract Administrator sends the consultant a fully executed copy of the contract with an original signature and issues a notice to proceed. Funds may not be used to reimburse the agency for any work or costs incurred before the "Authorization to Proceed" is issued, or for consultant costs incurred prior to the execution of the consultant contract. Local agency consultant selection and contract execution costs may be reimbursable.

For on-call contracts, a fully executed copy of the contract with original signatures will be sent to the consultant. Each subsequent "task order" (for individual project) will be accompanied with a copy of the signed task order and a Notice to Proceed, once it is negotiated and approved.

**Administer the Contract**

Project work begins as specified in the contract after the notice to proceed is issued to the consultant. Thereafter, the local agency manages and administers the contract to ensure that a complete and acceptable product is received on time, within standards, and within budget and terms of the contract.

Contract administration activities help to ensure that contractual obligations are completed satisfactorily. Generally, these activities include:

- Monitoring project progress and compliance with contract requirements;
- Receiving, reviewing and assessing reports, plans and other required products/deliverables;
- Receiving and reviewing state prevailing wages. (See Department of Industrial Relations websites below.
  - DIR FAQ website:  
[http://www.dir.ca.gov/OPRL/FAQ\\_PrevailingWage.html](http://www.dir.ca.gov/OPRL/FAQ_PrevailingWage.html)
  - DIR Wage Determination website:  
<http://www.dir.ca.gov/oprl/DPreWageDetermination.htm>
- Reviewing invoices to ensure costs claimed are in accordance to the method of payment and contract cost proposal, approving payments;
- If new consultant personnel are added or substituted, labor rates must be verified prior to approving invoices.
- Record keeping and reporting;
- Controlling costs;
- Identifying changes to the scope of work and preparation of amendments (must ensure that any changes to the scope is within the constraints of the original RFP/RFQ);
- Completing the consultant performance evaluations (see Exhibit 10-S Consultant Performance Evaluation).

**Substitution of Consultant Personnel and Subconsultants**

After contract execution the consultant should not substitute key personnel (project manager and others listed by name in the cost proposal) or subconsultants without prior written approval from the local agency. To do so can result in the costs being ineligible for federal or state reimbursement. The consultant must request and justify the need for the substitution and obtain approval from the local agency prior to use of a different subconsultant on the contract. The proposed substituted person must be as qualified as the original, and at the same or lower cost.

For engineering types of consultant contracts, the consultant's project manager must be a registered engineer in the State of California.

**Invoicing (or Progress Payments)**

The frequency and format of the invoices/progress payments are to be determined by the contract. Program Supplement Agreements (see Chapter 3 "*Agreements*") need to have been prepared prior to any payments being requested. Payments to the consultant are to be in arrears. In other words, the consultant must have actually incurred and paid the costs before invoicing the local agency.

For federal or state reimbursement of consultant costs on a project, the local agency must submit the following to the DLAE, for each consultant or consulting firm used on the project (failure to do so will result in the consultant's invoices for reimbursement being returned to the agency unprocessed):

- Copy of Executed Consultant contract;
- Exhibit 10-C Consultant Contract Reviewers Checklist;
- Exhibit 10-O1 Consultant Proposal DBE Commitment (federally funded projects only);
- Exhibit 10-O2 Consultant Contract DBE Information (federally funded projects only);

DLAE must confirm that the local agency has submitted copies of Exhibit 10-K Consultant Certification of Contract Costs and Financial Management System (for Prime and Subconsultants) to Caltrans A&I.

Invoices should include the following:

- Prepared on the consultant's letterhead;
- Signed by the consultant's project manager;
- Have a unique invoice number;
- Appropriate documentation attached;
- If the contract involved milestones, each milestone should be invoiced separately;
- If the contract involved subconsultants, a separate invoice for each subconsultant should be attached in the same format as the prime consultant's invoice and should be included in the summary of the prime consultant's invoice.

The following are requirements associated with each invoice that the local agency should include:

- A summary of the reimbursements to-date and a summary of the funds remaining in the contract. This should be compared to the local agency's own record of reimbursements to-date and a summary of the funds remaining in the contract.
- A summary of all payments to-date and funds remaining in the contract for each subconsultant.

The local agency is to follow the procedures given in Chapter 5 "*Invoicing*," to obtain reimbursement of federal or state funds.

### **Contract Amendments**

Contract amendments are required to modify the terms of the original contract for changes such as extra time, added work, or increased costs. Only work within the original advertised scope of services shall be added by amendment to the contract. The addition of work outside the original advertised scope will make that work ineligible for federal or state reimbursement (see Q&As): [http://www.fhwa.dot.gov/programadmin/172qa\\_01.cfm](http://www.fhwa.dot.gov/programadmin/172qa_01.cfm)).

There is no prescribed format for contract amendments. They may take the form of letter-type agreements meeting the legal requirements of the local agency, clearly outlining the changes and containing a mutually agreed upon method of compensation. Such agreements must conform to the requirements of this manual with regard to payment.

**A consultant contract may be amended at any time prior to the expiration date of the original contract.** The most common amendment is to extend the ending date of the contract. All contract amendments must be fully executed before the ending date of the contract. Failure to amend a contract prior to the ending date will make the subsequent costs ineligible for federal and state reimbursement.

For on-call consultant contracts, the amendment is restricted to the work (task order) that has already been started by the consultant and can not include any new work.

All contract amendments must be in writing and fully executed by the consultant and local agency before reimbursable work begins on the amendment. If an emergency exists of such magnitude that a delay cannot be tolerated, the local agency and the consultant may agree on an amendment initiating the work, so that reimbursable work may begin. The initiating amendment is then followed by a final amendment once the full scope of the emergency work is known and agreed to by both parties. In both cases, sufficient funding should be included in the amendments to pay for all work to be performed by the consultant. The final amendment must be executed as quickly as possible. Failure to fully comply with this section may result in the loss of local agency funding.

If an amendment increases the contract to over \$1M then the procedures in either Case 2 or Case 3 under Section 10.3 "*A&E Consultant Audit and Review Process*" of this chapter, shall apply to the entire contract, and must be completed prior to execution of the contract amendment.



**Performance Evaluation**

Pursuant to 23 CFR §172.9(a) agencies are required to prepare an evaluation of the consultant when the project has been completed. The Contract Administrator evaluates the consultant's performance after the consultant's final report has been submitted, and the Contract Administrator has conducted a detailed evaluation with the consultant's project manager. See Exhibit 10-S Consultant Performance Evaluation for a suggested format for use by the local agency.

**Project Records**

Federal-Aid Highway Program funding recipients and sub-recipients must maintain adequate and readily accessible project performance and financial records, supporting documents, and other records considered pertinent to the grant agreement and in compliance with Federal laws and regulations (e.g., 23 USC 112; 40 USC 1101-1104, 23 CFR 172, 48 CFR 31, and 49 CFR 18). These records shall be maintained for a minimum of three (3) years following issuance of the final voucher from FHWA (forwarded by Caltrans) and the closure of all other pending matters (49 CFR 18.42(b)).

For audit purposes, project records and documentation shall be kept for three (3) years after payment of the final federal or state voucher. Among the records to be retained are as follows (not an all-inclusive list):

- Copies of RFPs and RFQs, changes, addendums, etc. and bidder's list;
- Documentation of DBE participation (including Exhibit 10-O1 Consultant Proposal DBE Commitment" and 10-O2 "Consultant Contract DBE Information);
- Solicitation and advertisement records;
- Identification of selection committee members;
- Record of receiving proposals, statement of qualifications;
- Evaluation and ranking records such as original score sheets from all panel members, short list questions and other documentation (see Exhibit 10-B Suggested Consultant Evaluation Sheet);
- Independent cost estimate (prepared in advance of receipt of RFPs and RFQs);
- Record of negotiations (to include a separate negotiations of profit in accordance with federal guidelines);
- Conformance and Cognizant Agency Letters, when applicable;
- CPA-audited ICR Audit Report or Approved State DOT Cognizant Indirect Rate Letter, if any;
- Consultant Certification of Costs and Financial Management (Exhibit 10-K Consultant Certification of Contract Costs and Financial Management System) for contracts over \$150,000;
- Conformance Review Letter from A&I, if applicable. Document the resolution of deficiencies that were identified in the conformance letter.

- A&E Consultant Audit Request Letter and Checklist (Exhibit 10-A A&E Consultant Audit Request Letter and Checklist) for contracts over \$1,000,000, and all supporting documentations.
- Executed consultant contracts, cost proposals and amendments (see Exhibit 10-R A&E Sample Contract Language and Exhibit 10-H Sample Cost Proposal);
- Contract oversight and progress meeting documents;
- Progress and final payments, and supporting documentation;
- Performance evaluation (see Exhibit 10-S Consultant Performance Evaluation);
- Consultant contract checklists (see Exhibit 10-C Consultant Contract Reviewers Checklist);
- Accounting records documenting compliance with State and federal administrative requirements;
- Certifications and Conflict of Interest forms (Exhibit 10-L Local Agency Certification of Cost Analysis, Exhibit 10-T Panel Member Conflict of Interest & Confidentiality Statement, Exhibit 10-U Consultant in Management Position Conflict of Interest and Confidentiality Statement and Exhibit 10-Q Disclosure of Lobbying Activities, as appropriate).

## 10.9 MISCELLANEOUS CONSIDERATIONS

### Engineering Services Under \$150,000

The procurement of consultant services by Small Purchase Procedures is in accordance with 23 CFR §172.5(a)(2) modified by FHWA Memorandum dated June 26, 1996, and 49 CFR 18.36(d).

Local agencies should be fully aware that consultant services costing in aggregate no more than \$150,000 per contract may be obtained through a relatively simple and informal method of procurement. This informal method must be sound and appropriate for the consulting services procured and the project files must contain justification for the selection. The method of procurement shall be an open and competitive process in selecting consultants and should consider a minimum of three different consultants whenever possible. The Brooks Act and the consultant audit process described in Section 10.3 *"A&E Consultant Audit and Review Process"* of this Chapter do not apply to consultant service contracts under \$150,000. Although this method of procurement is informal, it must still comply with Sections 10.1 *"General,"* 10.2 *"Identifying & Defining a Need for Consultants,"* 10.8 *"Completing the Project"* and 10.9 *"Miscellaneous Considerations,"* of this Chapter.

Project splitting should not be used to take advantage of the small purchase procedure in order to circumvent the Brooks Act.

**Summary of Required/Non-Required Activities for Small Purchase Procedure**

REQUIRED	NOT REQUIRED
<ul style="list-style-type: none"> <li>• Competitive process (collect three bids)</li> <li>• Conflict of interest determination</li> <li>• Assigned Contract Administrator</li> <li>• Defined scope of work/schedule of deliverables/start and end dates for contract</li> <li>• Defined deliverables/Prime and Subconsultant responsibilities</li> <li>• DBE goal for contract; Exhibits 10-O1, 10-O2</li> <li>• Cost estimate prior to receiving bids</li> <li>• Best method of payment determination</li> <li>• Contract provisions/clauses</li> <li>• Evaluation of consultant, justification of selection</li> <li>• Contract management responsibilities</li> </ul>	<ul style="list-style-type: none"> <li>• No RFP/RFQ</li> <li>• No Selection/Evaluation Panel</li> <li>• No Evaluation criteria disclosure requirements</li> <li>• No record of costs/profit negotiations</li> <li>• No audit and review requirement of contract (no Exhibit 10-K)</li> </ul>

Price or rate quotation may be considered in the selection of A&E consultants on contracts below \$150,000 and must be documented in the project files. Qualified small business firms shall be considered for selection on federal-aid and state reimbursed contracts. Additionally, on federal-aid contracts, qualified DBE firms shall be considered for selection, and the appropriate federal contract language shall be included.

The full amount of any contract modification or amendment that would cause the total contract amount to exceed the Federal simplified acquisition threshold (currently established at \$150,000) would be ineligible for federal funding. Also, FHWA reserves the right to withdraw all federal-aid funding from a contract if it is modified or amended above the applicable established simplified acquisition threshold.

**Noncompetitive Negotiated Contracts (Sole-Source)**

Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals (49 CFR Part 18.36).

FHWA considers these types of contracts as "Sole Source" contracts and should be used only in very limited circumstances. A Public Interest Finding prepared by the local agency and approved by Caltrans is required before establishing these services (23 CFR 172.7(a)(3); also see Exhibit 12-F Request for Approval of Cost-Effectiveness/Public Interest Finding).

Conditions under which noncompetitive negotiated contracts may be acceptable include:

- Only one organization is qualified to do the work;
- An emergency exists of such magnitude that cannot permit delay;

- Competition is determined to be inadequate after solicitation of a number of sources.

The local agency shall:

- Follow its defined process for noncompetitive negotiation;
- Develop an adequate scope of work, evaluation factors, and cost estimate before solicitation;
- Conduct negotiations to ensure a fair and reasonable cost.

The local agency must carefully document details of the special conditions, obtain Caltrans approval on a Public Interest Finding and retain all documents in the project files for future Caltrans' or FHWA's review.

A Public Interest Finding (see Exhibit 12-F Request for Approval of Cost-Effectiveness/Public Interest Finding) is not required for a local agency to be reimbursed for contract administration activities associated with non-infrastructure type projects such as many Safe Routes to School or Transportation Alternatives Program projects. However, an indirect cost allocation plan must be approved in order to be reimbursed for this work (see <http://www.fhwa.dot.gov/legregs/directives/policy/indirectcost.htm>).

### **Personal Services Contracts**

A personal services contract is characterized by the employer-employee relationship created between the local agency and the contract personnel who essentially perform similar duties as the employees. When personal engineering services less than \$150,000 or non-engineering consultant or vendor services for non-infrastructure programs are needed and federal or state reimbursement will be sought, these services may be obtained through Small Purchase Procedures up to a limit of \$150,000 each.

The \$150,000 is a cumulative limit for services provided by any individual consultant or consulting firm. Such services must be under the direction and control of a full-time employee of the local agency in responsible charge. Compensation for construction engineering services should be based on actual costs incurred, plus a fixed fee, or in the case of individual compensation on an agreed-upon hourly or daily rate. Lump sum payments should not be used for construction engineering services.

For personal service contracts, the following information must be documented by the local agency and retained in the project files:

- Explanation of the services needed, and why they cannot be provided by the local agency;
- Name and qualification of the consultant, who provided the services;
- Documentation of the fees showing how the fee was calculated, and that it is reasonable by comparative standards;
- Any other records needed to show compliance with federal-aid program regulations.

**Retaining a Consultant as an Agency Engineer or in Management Role**

A local agency may retain qualified consultants on its staff in professional capacities such as agency consultant engineers, architects, or public agency officials in a management role such as City Engineer (or equivalent). The agency consultants can be an individual or a firm providing professional or management services.

The use of a consultant in a management role should be limited to unique or very unusual situations. These situations require a thorough justification as to why the local agency cannot perform the management. Consultants used in management roles must be selected using the same procedures as those for other consultants specified in this chapter.

Eligibility for federal or state reimbursement for local agency engineering (or equivalent) services requires the following:

- Compliance with the selection procedures specified in this chapter;
- Existence of a contract between the local agency and the consultant specifying the local agency engineering services to be performed;
- Written designation by the local agency of the responsibilities and authority of the consultant as an agency engineer;
- For a state funded or federal-aid project, completion of Exhibit 10-T Panel Member Conflict of Interest & Confidentiality Statement by all members (both consultants and employees) prior to participating in the Architect & Engineering (A&E) Selection Panel pertaining to the specific selection process and the firms being considered;
- For a state funded or federal-aid project, a local agency consultant in a management role shall not:
  - Participate in, or exercise authority over the A&E selection process, if that consultant's firm is one of the proposing firms, or subconsultant to a proposing firm;
  - Participate in, or exercise authority over management of work performed by the consultant's firm, or to a consultant's firm of which the local agency consultant firm is a subconsultant. This would include, but not be limited to, managing or directing the work, approving changes in the schedule, scope, or deliverables; and approving invoices.
  - Apply for or receive reimbursement of federal-aid funds for the local agency's federal-aid project if either of the foregoing has occurred. However reimbursement for the construction contract portion of the project will still be allowed provided all other federal-aid requirements have been met.
  - Where benefiting more than a single federal-aid project, allocability of consultant contract costs for services related to a management role shall be distributed consistent with the cost principles applicable to the contracting agency in 49 CFR 18.22.

- For a state funded or federal-aid project, completion of Exhibit 10-U Consultant in Management Position Conflict of Interest and Confidentiality Statement by all consultant engineering staff in management positions.
- A completed Exhibit 10-U Consultant in Management Position Conflict of Interest and Confidentiality Statement form shall be submitted to the DLAE, for concurrence by the local agency concurrently with submitting the request for the funding authorization of an A&E contract which will contain federal or state funds.
- Selection of consultants for A&E management positions shall be by the use of qualification based selection procedures on an open and competitive basis resulting in a contract with defined beginning and ending dates not to exceed five (5) years.

**All consultants acting in a management role must complete Exhibit 10-U Consultant in Management Position Conflict of Interest and Confidentiality Statement and retain it in the local agency files.**

If engineering services for a project are within the scope of the services described in the retained consultant's contract, these services may be performed by the person or firm designated as an agency engineer. If the services are not within the scope, eligibility for federal or state reimbursement for these services require a new consultant contract to be developed using the selection procedures in this chapter. Retained consultants involved in the preparation of the RFP or RFQ shall not be considered in the selection of consultants for the resulting project specific work.

When engineering or architectural consultants are procured with federal-aid funds, the local agency (subgrantee) shall fully comply with the following:

- Subparagraphs of 49 CFR §18.36(b)(2) "...maintain a contract administration system...."; and (3) "...maintain a written code of standards.... No employee, officer or agent of the ...subgrantee shall participate in selection, or in the award or administration of a contract supported by federal funds if a conflict of interest, real or apparent, would be involved...."
- Subparagraph of 23 CFR §172.9(d) "Consultant in management roles," requires that if a local agency has or intends to have a consultant in a management role (except as the designated public official, City Engineer or equivalent, as provided for under the terms of the local agency contract), the local agency shall receive approval from Caltrans. In addition, any federal-aid projects designated as "High Profile" projects may also need approval from FHWA.
- Liability insurance should normally be required from the consultant (errors and omissions, etc.).

### **Construction Engineering Services**

Under federal-aid regulations and state policy, the primary responsibility for general supervision of construction must remain with the local agency. The local agency must also ensure that the work is performed in accordance with the approved plans and specifications, by

employing or retaining as a consultant a registered engineer for construction engineering services on the project.

All construction engineering activities performed by a consultant must be under the overall supervision of a full-time employee of the agency who is in responsible charge. These activities may include preparation of contract change orders, construction surveys, foundation investigations, measurement, and computation of quantities, testing of construction materials, checking of shop drawings, preparation of estimates, reports, and other inspection activities necessary to ensure that the construction is being performed in accordance with the plans and specifications. The construction engineering consultant's contract defines the relative authorities and responsibilities of the full-time employee of the local agency in charge of the project and the consultant's construction engineering staff.

If a technical inspection consultant is to provide professional assistance to the local agency, a formal consultant contract must be executed which follows this chapter's requirements. The contract shall provide for reviews at appropriate stages during performance of the work to determine if any changes or other actions are warranted. These reviews are to be made by the local agency.

## 10.10 REFERENCES

- 23 CFR, Part 172 – Administration of Engineering and Design Related Service Contracts  
<http://www.ecfr.gov/cgi-bin/text-idx?rgn=div5&node=23:1.0.1.2.3>
- 40 USC, Section 1104 – Brooks Act  
<http://www.fhwa.dot.gov/programadmin/121205.cfm>
- 41 CFR – Public Contracts and Property Management  
[http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title41/41tab\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title41/41tab_02.tpl)
- 41 USC – Public Contracts  
<http://law.onecle.com/uscode/41/index.html>
- 23 USC – Letting of Contracts  
<http://www.fhwa.dot.gov/map21/docs/title23usc.pdf>
- 48 CFR, Chapter 1, Part 15.404
- 48 CFR, Chapter 1, Part 31  
<https://www.acquisition.gov/far/html/FARTOCP15.html>
- Title 48, Part 16 – Types of Contracts  
<http://www.elaws.us/subscriber/signin?returnurl=http://federal.elaws.us/cfr/title/4/10/2013/title48/chapter1/part16&IsHistory=1&AspxAutoDetectCookieSupport=1>

- 48 CFR 27, Subpart 27.3 – Patent Rights under Government Contracts  
<https://www.law.cornell.edu/cfr/text/48/part-27/subpart-27.3>
- 48 CFR 31.201-3  
<https://www.gpo.gov/fdsys/pkg/CFR-2011-title48-vol1/pdf/CFR-2011-title48-vol1-sec31-201-6.pdf>
- 48 CFR, Chapter 99 – Cost Accounting Standards, Subpart 9900  
<https://www.gpo.gov/fdsys/granule/CFR-2002-title48-vol7/CFR-2002-title48-vol7-chap99>
- 49 CFR, Part 18  
[http://www.nhtsa.gov/nhtsa/whatsup/tea21/GrantMan/HTML/03\\_DOTComRul\\_49CFR18.html](http://www.nhtsa.gov/nhtsa/whatsup/tea21/GrantMan/HTML/03_DOTComRul_49CFR18.html)
- 49 CFR, Part 26 – Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs  
[http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26\\_main\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26_main_02.tpl)
- American Association of State Highway and Transportation Officials (AASHTO) Uniform Audit and Accounting Guide  
<http://audit.transportation.org/Pages/default.aspx>
- Caltrans Division of Procurement and Contracts Website  
<http://www.dot.ca.gov/dpac/index.html>
- California Labor Code, Section 1775  
<http://law.onecle.com/california/labor/1775.html>
- Government Auditing Standards (GAS) issued by the United States Government Accountability Office  
<http://www.gao.gov/yellowbook/overview>
- Government Code Sections 4525 through 4529.5  
<http://www.leginfo.ca.gov/cgi-bin/displaycode?section=gov&group=04001-05000&file=4525-4529.5>
- OMB Circular A-110 – Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations  
[https://www.whitehouse.gov/omb/circulars\\_a110](https://www.whitehouse.gov/omb/circulars_a110)
- Standard Environmental Reference (SER)  
<http://www.dot.ca.gov/ser/>



**REQUEST FOR QUALIFICATION (RFQ) For  
CITY OF PLEASANTON'S ON CALL SERVICES FOR  
GENERAL CIVIL ENGINEERING SERVICES**

The City of Pleasanton's Community Development Department is currently seeking to retain a maximum of three (3) general civil engineering firms for on-call services. The term of the contract will be three (3) years (FY 2013-2016), with a not-to-exceed, aggregate total contract amount of \$750,000. Anticipated services are for project design and construction activities, and may include but are not limited to: general consulting, peer review, civil engineering, plan checking, Capital Improvement Program project design, provide engineering recommendations for emergency situations, computer or manual drafting, and other tasks associated with Public Works infrastructure design, construction, and/or operation as assigned and directed by the City Engineer. These services will provide support for engineering services for various City capital improvement and private development related projects.

RFQ may be obtained at the Engineering Division of the City of Pleasanton, Civic Center, 200 Old Bernal Avenue, at no cost. The RFQ shall be posted on E-Bid board and available at the City's website at [www.ci.pleasanton.ca.us](http://www.ci.pleasanton.ca.us).

Statements must be received no later than 5:00 p.m., local time, on March 25, 2016, at the Department of Community Development, Engineering Division, and City of Pleasanton. Address to:

City of Pleasanton  
Community Development Department  
200 Old Bernal Avenue  
P.O. BOX 520  
Pleasanton, CA 94566-0802  
Attn: Adam Nelkie

**REQUEST FOR QUALIFICATION (RFQ)**  
**For**  
**CITY OF PLEASANTON'S ON CALL SERVICES FOR**  
**GENERAL CIVIL ENGINEERING SERVICES**

**I. INTRODUCTION**

The City of Pleasanton's Engineering Department is currently seeking to retain a maximum of three (3) general civil engineering firms for on-call services. The term of the contract will be three (3) years (FY 2013-2016), with a not-to-exceed, aggregate total contract amount of \$750,000. Anticipated services are for project design and construction activities, and may include but are not limited to: general consulting, peer review, civil engineering, plan checking, Capital Improvement Program project design, provide engineering recommendations for emergency situations, computer or manual drafting, and other tasks associated with Public Works infrastructure design, construction, and/or operation as assigned and directed by the City Engineer. These services will provide support for engineering services for various City capital improvement and private development related projects.

This Request for Qualification (RFQ) describes the Scope of Services, the necessary components of the Statement of Qualification, the consultant selection process, and a sample copy of the Standard Professional Services Agreement. This RFQ also describes the required format of submitted Statement of Qualification.

**II. BACKGROUND**

The City of Pleasanton has identified a need to utilize an on call contract for routine and emergency projects. For routine projects, the three selected consultants will be asked to submit proposals for the individual projects. For Emergency work, the first available consultant will be asked to perform the work. For special large projects that require extensive survey work, separate RFQs will be issued and will not be included under the contract gap.

The City of Pleasanton is organized into numerous departments and divisions, such as the Engineering Department, Inspection Services, Traffic Engineering, and Field Services (Water, Sanitary Sewer, Storm Drains and Streets). City staff, in any of these divisions, may require immediate services and it is possible that more than one could require services at the same time.

**III. PROJECT SCHEDULE**

- |   |                   |
|---|-------------------|
| - Advertise RFQ                                 | February 20, 2016 |
| - Statement of Qualification submittal deadline | March 25, 2016    |

- |  |                |
|--|----------------|
| - Shortlist for interviews                     | April 15, 2016 |
| - Conduct consultant interviews (if necessary) | April 25, 2016 |
| - Select consultant                            | May 2, 2016    |
| - Negotiate contract                           | May 10, 2016   |
| - City Council approval of contract            | June 7, 2016   |
| - Start of Contract                            | July 1, 2016   |

#### IV. SCOPE OF WORK

The selected civil consultant on call services may include, but are not limited to: general consulting, peer review, civil engineering, plan checking, Capital Improvement Program project design, provide engineering recommendations for emergency situations, computer or manual drafting, and other tasks associated with Public Works infrastructure design, construction, and/or operation as assigned and directed by the City Engineer. These services will provide support for engineering services for various City capital improvement and private development related projects.

The City's civil on call consultant shall provide general engineering analysis; design and peer review services, and shall include, but are not limited to the following:

1. Roadway and peer review of designs for new local streets and roads, road widening for safety and capacity, intersection improvements such as turn pockets, median-island, and curb ramp for Americans with Disability Act (ADA) compliance.
2. Design of roadway maintenance projects including crack sealing, base repairs, curb and gutter replacement, slurry/micro seals, overlay, and reconstruction.
3. Design of frontage improvements i.e. curb and sidewalk for paving projects and ADA compliance.
4. Water infrastructure analysis and peer review for water lines, turn outs, storage facilities and design of new water pipe lines.
5. Design of water maintenance projects including; water line replacement, pump station and well rehabilitation, valve replacement and storage tank coatings, and cathodic protection.
6. Sewer infrastructure analysis and peer review for sewer lines, pump stations and design of new sewer lines.
7. Design of sewer maintenance projects including; sewer and manhole replacement and rehabilitation, pump station rehabilitation, siphon replacement, etc.
8. Stormwater infrastructure design, analysis and peer review including stormwater treatment and flow control improvements for Clean Water Program compliance, area wide drainage improvements, such as open channels, concrete box culverts, large diameter storm drain pipes, manholes, and collector pipes, ditches and inlets, storm water detention basin construction and modifications.

9. Design of stormwater maintenance projects including; storm drain pipes, manholes and collector pipes, area inlets and trash capture devices, retention/detention basins cleaning and modifications, channel cleaning, restoration, etc.
10. Structural design, analysis and peer review for retaining walls, sound walls, and minor modifications to existing public buildings/structures.
11. Assistance in regulatory compliance and permitting including Fish and Game, Army Core of Engineers, California State Water Board,
12. Knowledge and experience with Caltrans Local Assistance Procedures Manual and Guidelines is desirable, but not required.
13. Knowledge and experience with local bridge and culvert inspection and use of Pontis Elemental Bridge Inspection procedures is desirable, but not required.

## **V. STATEMENT REQUIREMENT**

### **A. General**

1. The Statement shall be concise, well organized and demonstrate an understanding of the Scope of Services. The Proposal shall be limited to twenty five (25) one-sided pages (8 1/2 inches X 11 inches), inclusive of resumes, graphics, forms, pictures, photographs, dividers, front and back covers, cover letter, etc. Type size and margins for text pages should be in accordance with accepted standard formats for desktop publishing and processing and should result in no more than five hundred (500) words per page.
2. The Statement will be evaluated based on the information submitted in accordance with Section X of this RFQ package.

### **B. Content**

Elements of statements submitted in response to this RFQ shall be in the following order and shall include:

1. Executive Summary

Include a 1-2 page overview of the entire Statement of Qualifications describing its most important elements.

2. Identification of the Project Team

- a. Legal name and address of company

- b. Legal form of company (partnership, corporation, joint venture, etc.). If joint venture, identify the members of the joint venture and provide all information required within this section for each member.
- c. Address(es) of office(s) working on the project
- d. Name, title, address and telephone number of the person to contact concerning the submittal

3. Experience and Technical Competence

Consultant shall describe his or her experience in completing similar consulting efforts. Consultant shall list five (5) successful projects of a similar nature completed in the last ten years. Name of clients and project managers, telephone numbers, the type of work performed, and the value of the consulting contracts shall be included. Projects currently being performed may be submitted for City's review.

4. Methods Proposed to Accomplish the Work

Outline the basic technical procedures and the managerial approach, which the project team leadership will adopt to incorporate these methods into the overall project effort. Provide assurance that adequate staffing is available to provide the services efficiently and in a timely fashion.

5. Knowledge and Understanding of the Industry

Describe the project team's experience working in the industry. The industry may be defined as the City's, other similar local agencies', and the State's policies, practices, design criteria and standards that will be drawn upon to accomplish the project. The Consultant shall describe the involvement it has established for maintaining communication with clients' representatives.

6. Project Organization and Key Personnel

- a. The written qualification statement must include a discussion of consultant's staffing plan and level of personnel to be involved, their qualifications, experience, resumes, roles, and the name of the individual who will be in overall charge and responsible for coordination with the City. Indicate the role and responsibility of prime consultant and all sub-consultants. If applicable, indicate how local firms are being

utilized to ensure a strong understanding of local laws, ordinances, regulations, policies, requirements and permitting. The City's evaluation of the proposal will consider consultant's entire team. Once proposed, no changes in the team composition will be allowed without prior written approval of the City. Sub-consultant letters of commitment may be required.

- b. Identify proposed sub-consultants (if any) that will be retained to perform specified items of work listed in the "Scope of Services."

7. Schedule of Fees

- a. The "schedule of fees" will be negotiated with the selected firms. In the event that a fee for the required services cannot be negotiated with the selected top ranked firm, the City reserves the right to discontinue negotiations and begin negotiations with another firm. This procedure may be repeated until a maximum of three (3) Firms have been approved by the City Council.
- b. The statement of qualifications must include a "schedule of fees" which lists each personnel classification that will work on the project and the hourly rate charged for each classification by each fiscal year.
- c. If the selected consultants have reached the not-to-exceed aggregate total amount of \$750,000 prior to the end of the three year term, the City reserves the right to repeat the consultant selection procedure or to negotiate an amendment(s) to the contracts for additional services, all at the City's sole discretion.

8. Exceptions to this Request for Qualifications

The Consultant shall certify that it takes no exception(s) to this RFQ including, but not limited to, the sample City's Standard Professional Services Contract, Attachment No. 1.

The RFQ shall include a statement that consultant has read the City's Standard Professional Services Agreement and will enter into such agreement if the consultant is selected.

**VI. METHOD OF PAYMENT**

It is anticipated that there will be numerous work requests generated by the City and a separate proposal will be necessary for each request. Prior to proceeding

with any work, a written proposal will need to be submitted, identifying the scope of services and anticipated costs specific to the work request. Upon review and approval of the written proposal by City staff, a written authorization will be rendered in the form of a Notice-to-Proceed.

The method of payment to the selected Firms shall be on a time-and-material basis with a cumulative not-to-exceed contract limit of \$750,000. This amount shall include labor, overhead, profit and expenses including transportation, communications, and materials. Progress payments will be based on actual hours and contract hourly rates charged to a particular task on a monthly basis.

Each invoice submitted to the City for payment shall contain a brief description of the work billed on that invoice, total billed to date, total paid to date and amount remaining.

## **VII. SUBMITTAL REQUIREMENTS**

- A. Four hard copies of the Statement of Qualifications (Statement) shall be submitted. Statements submitted by facsimile are not acceptable and will not be considered.
- B. Statements shall be signed by an individual or individuals authorized to execute legal documents on behalf of the Consultant and shall contain a declaration to the effect that the proposed project team will remain in effect for a minimum of 60 days after the submittal date.
- C. Statements must be received no later than 5:00 p.m., local time, on March 1, 2013, at the Engineering Department. Address to:  
  
City of Pleasanton  
Engineering Department  
200 Old Bernal Avenue  
P.O. BOX 520  
Pleasanton, CA 94566-0802  
Attn: Adam Nelkie
- D. Statements are to be submitted in sealed packages with the following information clearly marked on the outside of each package:
  - 1. Name of Consultant
  - 2. Project Title
  - 3. Package Number (e.g., 1 of \_\_\_\_\_, 2 of \_\_\_\_\_)
- E. Statements and/or modifications to Statements received after the hour and date specified above will not be considered.

- F. All proposals shall be submitted according to the specifications set forth in the RFQ. Failure to adhere to these specifications may be cause for rejection.
- G. Once submitted, proposals, including the composition of the consulting staff, shall not be changed without prior written consent.
- H. All requests for clarification for this RFQ must be made in writing. The City will only respond to written questions from consultants who have received this RFQ. The City cannot respond to verbal questions submitted by telephone or in person.

#### **VIII. PRE-SUBMITTAL ACTIVITIES**

- A. All questions relating to the RFQ shall be presented in writing at-least 96 hours prior to the due date to:

City Of Pleasanton  
Engineering Department  
200 Old Bernal Avenue  
P.O. BOX 520  
Pleasanton, CA 94566-0802  
Attn: Adam Nelkie  
Email address: [anelkie@cityofpleasantonca.gov](mailto:anelkie@cityofpleasantonca.gov)

- B. The City reserves the right to revise the RFQ prior to the indicated due date. City may consider extending the due date for RFQ due to significant revisions to "Scope of Services."

#### **IX. CONSULTANT NOMINATING AND SELECTION PROCESS**

- A. A Consultant Selection Committee will be established for this project. Each member of the committee will evaluate each submitted Statement.
- B. The Committee will select a short-list of firms qualified for this project to participate in an oral interview.
- C. Based on qualifications provided in Statements and oral interviews, the committee will rank the consultants. The top-ranked firm will be the Selected Firm.
- D. The City reserves the right to make the final consultant selection based solely upon evaluation of the Statement of Qualifications, without short-listing firms or conducting oral interviews, should it find it to be in its interest to do so.



- E. The Committee, or a representative, will enter into negotiations with the selected firm. The negotiations will cover: "Scope of Work," contract schedule, contract terms and conditions, technical specifications, and fees. If the Committee is unable to reach an acceptable agreement with the Selected Firm, the negotiations will be terminated and negotiations with another firm will be initiated.
- F. After negotiating a proposed agreement that is fair and reasonable, the City Engineer will recommend to the City Manager/City Council, as appropriate, the approval of the agreement. Final authority to approve the agreement rests with the City Manager/City Council.

#### **X. EVALUATION CRITERIA**

Consultants will be evaluated on the following criteria:

- A. Project Understanding: 10 points
  - 1. Comprehension of the Scope of Services
  - 2. Awareness of the City's need
  - 3. Familiarity with the project
  - 4. Overall interest in the project
- B. Project Team and Staffing Qualifications: 25 points
  - 1. A combination of experience, education, and background in undertaking similar type projects
  - 2. Level of involvement by firm's principals
- C. Experience: 20 points
  - 1. Relevant technical experience
  - 2. Relevant projects completed
  - 3. City's prior experience with the consultant
- D. Capabilities: 20 points
  - 1. Capability of developing innovative or advanced techniques
  - 2. Past performance on related assignments
  - 3. Stature in industry
- E. Local Sensitivity: 15 points

1. Governmental and regulatory agency familiarity
2. Knowledge of the local area

F. Financial Responsibility, Budgeting, and Scheduling: 10 points

1. Outline of project schedule
2. Cost control techniques
3. On time/within budget
4. Ability to complete the project on time

Total 100 points

## XII. SPECIAL CONDITIONS

A. Reservations

This RFQ does not commit the City to award a contract, to defray any costs incurred in the preparation of a proposal pursuant to this RFQ, or to procure or contract for work.

B. RFQ as a Public Record

All statements submitted in response to this RFQ become the property of the City and thus become public records and, as such, may be subject to public review.

C. Right to Cancel

The City reserves the right to cancel or change, for any or no reason, in part or in its entirety, this RFQ, including but not limited to: selection schedule, submittal date, and submittal requirements.

D. Additional Information

The City reserves the right to request additional information and/or clarification from any or all respondents to this RFQ.

E. Public Information

Consultants who wish to release information regarding the consultant selection process, contract award, or data provided by the City at any Public Hearing, must receive prior written approval from the City before disclosing such information to the public.

F. Contract for Professional Services

The selected consultants will be required to sign the Standard Professional Services Contract, Exhibit "A," and all other required certifications and documentation within fifteen (15) calendar days of Scope of Work and fee finalization.

G. Conflict of Interest

The City has established a policy concerning potential conflict of interest in program management, design and construction. This policy applies to all proposers and their proposed consultants/sub-consultants. See Exhibit "A," Standard Professional Services Contract, for additional information.

H. Insurance Requirements

The City requires consultants doing business with it to obtain insurance, as described in the Standard Professional Services Agreement, Section 14. The required insurance certificates must comply with all requirements of the standards as described in the contract and must be provided (original copy) within fifteen (15) days of notice of selection and prior to the commencement of any work on the project.

**XIII. CITY'S RESPONSIBILITY**

The City will provide the following information to the successful consultant as needed:

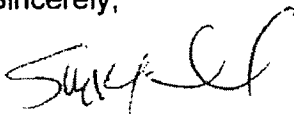
- A. Archive drawings and reports related to existing City's facilities.
- B. Aerial photography in Softdesk format.
- C. City's standard specifications and design guide.
- D. Answering non-technical questions during bid period.
- E. Reviewing all consultants' deliverables and providing comments in a timely manner.

**XIV. ATTACHMENTS**

Attachment 1: Sample Standard Professional Services Agreement

Thank you for your interest in contracting opportunities with the City of Pleasanton.

Sincerely,



Stephen Kirkpatrick  
City Engineer

- |  |
|--|
| <input type="checkbox"/> Exhibit A<br><input type="checkbox"/> Certificate of Insurance<br><input type="checkbox"/> Professional Liability (if required) |
|--|

### **AS-NEEDED PROFESSIONAL SERVICES AGREEMENT**

This As-Needed Professional Services Agreement ("Agreement") is entered into this 7th day of June 2016, between the CITY OF PLEASANTON, a municipal corporation ("City"), and \_\_\_\_\_ whose address is \_\_\_\_\_, and telephone number is (\_\_\_\_) \_\_\_\_\_, ("Consultant").

#### **RECITALS**

A. Consultant is qualified and experienced in civil engineering for the purposes specified in this Agreement.

B. City finds it necessary and advisable to have the Consultant available to provide as-needed services as described in this Agreement.

**NOW THEREFORE**, in consideration of the mutual covenants and conditions in this Agreement, City and Consultant agree as follows:

1. **Consultant's Services.** Consultant shall provide civil engineering for the City as requested by the City on an as-needed basis pursuant to individual work authorizations. This Agreement does not obligate the City to utilize Consultant exclusively for these services, and the City reserves the right to select other consultants for these services based on City need. City guarantees no level of work to be directed to Consultant.

2. **City Assistance.** In order to assist Consultant in this work, City shall provide, if necessary, documents available to the City, and access to any sites as needed for sampling, as related to individual work authorizations.

3. **Staff.** Consultant shall assign \_\_\_\_\_ to serve as Project Manager, who may not be replaced without written consent of City.

4. **Term.** The term of the agreement shall run from July 7, 2016 to June 30, 2019. Work authorizations issued by the City prior to the expiration of the term of this Agreement may be completed by Consultant after the term of this Agreement. Upon sole discretion of the City the City may extend the term of the contract for two one year extensions.

5. **Compensation.** For the as-needed services to be rendered, City shall pay Consultant on a time-and materials basis.

As for each work authorization, compensation shall be the amount set forth in each such individual work authorization, based on the rate schedule per Exhibit "A" which is attached and incorporated to this Agreement. Payment shall be made upon completion of the work in each individual work authorization and receipt and approval of Consultant's invoice. Total

compensation for services and reimbursement for costs shall not exceed each individual authorization unless parties agree pursuant to section 8.

a. Invoices submitted to City must reference the individual work authorization, contain a brief description of work performed if all of the work in the individual work authorization has not been completed, and City reference number \_\_\_\_\_. Payment shall be made within thirty (30) days of receipt of Consultant's invoice.

b. Upon completion of each work authorization, Consultant shall have sixty (60) days in which to submit final invoicing for payment. An extension may be granted by City upon receiving a written request thirty (30) days in advance of said time limitation. The City shall have no obligation or liability to pay any invoice for work performed which the Consultant fails or neglects to submit within sixty (60) days, or any extension thereof granted by the City, after the work set forth in an individual work authorization is completed and accepted by the City.

6. **Sufficiency of Consultant's Work.** By executing this Agreement, Consultant warrants that all services will be performed in a competent, professional and satisfactory manner. Should Consultant discover any latent or unknown conditions, it shall immediately inform City and proceed only at its own risk until instructed by City.

7. **Ownership of Work.** All reports, work data, plans, drawings, specifications, designs, photographs, images, works of authorship and all other documents completed or partially completed by Consultant in the performance of this Agreement ("materials") shall become the property of City. All materials shall be delivered to the City upon completion or termination of any work under this Agreement. If any materials are lost, damaged or destroyed before final delivery to the City, the Consultant shall replace them at its own expense. Any and all copyrightable subject matter in all materials is hereby assigned to the City and the Consultant agrees to execute any additional documents that may be necessary to evidence such assignment. Consultant shall keep materials confidential and shall not be used for purposes other than performance of services under this Agreement and shall not be disclosed to anyone not connected with these services, unless the City provides prior written consent.

8. **Changes.** City may request changes in the scope of services to be provided by Consultant. Any changes and related fees shall be mutually agreed upon between the parties and subject to a written amendment to this Agreement.

9. **Consultant's Status.** In performing the obligations set forth in this Agreement, Consultant shall have the status of an independent contractor and Consultant shall not be considered to be an employee of the City for any purpose. All persons working for or under the direction of Consultant are its agents and employees and are not agents or employees of City.

10. **Labor Code/Prevailing Wages.** To the extent applicable, Consultant shall comply with the requirements of the California Labor Code including but not limited to hours of labor, nondiscrimination, payroll records, apprentices, workers' compensation and payment of prevailing wages as determined by Director of the California Department of Industrial Relations. If applicable, Consultant shall post, at each job site, a copy of the prevailing rate of per diem wages. Consultant shall

forfeit fifty dollars (\$50.00) for each calendar day or portion thereof for each worker paid less than the stipulated prevailing rates for any public work done under the Agreement by it or by any subcontractor.

11. **Termination of Convenience of City.** The City may terminate this Agreement at any time by mailing a notice in writing to Consultant. The Agreement shall then be deemed terminated, and no further work shall be performed by Consultant. If the Agreement is so terminated, the Consultant shall be paid for that percentage of the work actually completed at the time the notice of termination is received.

12. **Non-Assignability.** The Consultant shall not assign, sublet, or transfer this Agreement or any interest or obligation in the Agreement without the prior written consent of the City, and then only upon such terms and conditions as City may set forth in writing. Consultant shall be solely responsible for reimbursing subcontractors.

13. **Indemnity and Hold Harmless.** Consultant shall defend, indemnify, and hold harmless, the City and its officers, agents and employees from and against all claims, losses, damage, injury, and liability for damages arising from, or alleged to have arisen from, errors, omissions, negligent or wrongful acts of the Consultant in the performance of its services under this Agreement, regardless of whether the City has reviewed or approved the work or services which has given rise to the claim, loss, damage, injury or liability for damages. This indemnification shall extend for a reasonable period of time after completion of the project as well as during the period of actual performance of services under this Agreement. The City's acceptance of the insurance certificates required under this Agreement does not relieve the Consultant from its obligation under this paragraph.

14. **Insurance.** During the term of this Agreement, Consultant shall maintain in full force and effect at its own cost and expense the following insurance coverage with insures with an A.M. Best's rating of no less than A:VII:

a. **General Liability and Bodily Injury Insurance.** Commercial general liability insurance with limits of at least \$1,000,000 combined limit for bodily injury and property damage that provides that the City, its officers, employees and agents are named additional insureds under the policy. The policy shall state in writing either on the Certificate of Insurance or attached rider that this insurance will operate as primary insurance for work performed by Consultant and its subconsultants, and that no other insurance effected by City or other named insured will be called on to cover a loss.

b. **Automobile Liability Insurance.** Automobile liability insurance with limits not less than \$1,000,000 per person/per occurrence.

c. **Workers' Compensation Insurance.** Workers' Compensation Insurance for all of Consultant's employees, in strict compliance with State laws, including a waiver of subrogation and Employer's Liability Insurance with limits of at least \$1,000,000.

d. **Professional Liability Insurance.** Professional liability insurance in the amount of \$1,000,000.

e. **Certificate of Insurance.** Consultant shall file a certificate of insurance with the City prior to the City's execution of this Agreement, and prior to engaging in any operation or activity set forth in this Agreement. The Certificate of Insurance shall provide in writing that the insurance afforded by this Certificate shall not be suspended, voided, canceled, reduced in coverage or in limits without providing thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City. In addition, the insured shall provide thirty (30) days prior written notice to the City of any suspension, cancellation, reduction of coverage or in limits, or voiding of the insurance coverage required by this agreement. The City reserves the right to require complete certified copies of policies.

f. **Waiver of Subrogation.** The insurer agrees to waive all rights of subrogation against the City, its officers, employees and agents.

g. **Defense Costs.** Coverage shall be provided on a "pay on behalf" of basis, with defense costs payable in addition to policy limits. There shall be no cross liability exclusions.

h. **Subcontractors.** Consultant shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated in this Agreement, including but not limited naming additional insureds.

15. **Notices.** All notices herein required shall be in writing and shall be sent by certified or registered mail, postage prepaid, addressed as follows:

To Consultant: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To City: City Manager  
City of Pleasanton  
P.O. Box 520  
Pleasanton, CA 94566

16. **Conformance to Applicable Laws.** Consultant shall comply with all applicable Federal, State, and Municipal laws, rules, and ordinances. Consultant shall not discriminate in the employment of persons or in the provision of services under this Agreement on the basis of any legally protected classification, including race, color, national origin, ancestry, sex or religion of such person.

17. **Licenses, Certifications and Permits.** Prior to the City's execution of this Agreement and prior to the Consultant's engaging in any operation or activity set forth in this Agreement, Consultant shall obtain a City of Pleasanton business license, which must be kept in effect during the term of this Agreement. Consultant covenants that it has obtained all certificates, licenses, permits and the like required to perform the services under this Agreement.

18. **Records and Audits.** Consultant shall maintain all records regarding this Agreement and the services performed for a period of three years from the date that final payment is made. At any time during normal business hours, the records shall be made available to the City to inspect and audit.

19. **Confidentiality.** Consultant shall exercise reasonable precautions to prevent the unauthorized disclosure and use of City reports, information or conclusions.

20. **Conflicts of Interest.** Consultant covenants that other than this Agreement, Consultant has no financial interest with any official, employee or other representative of the City. Consultant and its principals do not have any financial interest in real property, sources of income or investment that would be affected in any manner or degree by the performance of Consultant's services under this Agreement. If such an interest occurs, Consultant will immediately notify the City.

21. **Waiver.** In the event either City or Consultant at any time waive any breach of this Agreement by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Agreement, whether of the same or of any other covenant, condition or obligation.

22. **Governing Law.** California law shall govern any legal action pursuant to this Agreement with venue in the applicable court or forum for Alameda County.

23. **Attorney's Fees.** The prevailing party in any action brought to enforce or construe the terms of this Agreement may recover from the other party its reasonable costs and attorney's fees expended in connection with such an action.

24. **No Personal Liability.** No official or employee of City shall be personally liable to Consultant in the event of any default or breach by the City or for any amount due Consultant.

25. **Scope of Agreement.** This writing constitutes the entire Agreement between the parties. Any modification to the Agreement shall be in writing and signed by both parties.

**THIS AGREEMENT** executed the date and year first above written.

**CITY OF PLEASANTON**

**CONSULTANT**

By: \_\_\_\_\_  
Nelson Fialho, City Manager

By \_\_\_\_\_

Its \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
Karen Diaz, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Jonathan P. Lowell, City Attorney